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JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 581

JOSEPH ROLLINS,
Petitioner,

vs.

STATE OF MICHIGAN,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

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To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Comes now Joseph Rollins, petitioner herein, respondent in both Courts below, by James A. Jameson, his attorney, and hereby moves the Court to grant its Writ of Certiorari based on the following:

A.

REFERENCE TO THE OFFICIAL ORDERS AND OPINIONS OF BOTH COURTS BELOW

This Petition for Writ of Certiorari is filed to obtain relief at the hands of this Court, from Denials by a Michigan Court of the first instance, and by the Supreme Court of that State, of Timely Motion for a New Trial, and of Timely Application for Leave to Appeal.

The *"Findings of Fact"* and Order of the Court of the first instance Denying Timely Motion for a New Trial, were filed on June 4, 1956 (Appendix, pp. 4a-7a).

Application of Petitioner for Leave to Appeal, was Denied by the Supreme Court below, without Opinion. The Order of the Supreme Court below, was entered on July 24, 1956 (Appendix, pp. 62a-63a).

Petition for a Rehearing and Supplement thereto were filed on July 28, 1956, and August 1, 1956, respectively, and Denied on October 1, 1956 (Appendix, pp. 49a-50a; 55a-56a; 63a-64a).

Concurrently herewith, but separately herefrom, the following—certified by the Clerk of the Michigan Supreme Court—is believed to comprise, in conformity to Rules 21 and 22, of the Revised Rules of this Court, an adequate record of the proceedings had in both Courts below:

1. Motion for a New Trial.
2. Findings of the Trial Court on Motion for a New Trial.
3. Order of the Trial Court Denying Motion for New Trial.

4. Application for Leave to Appeal and Affidavit of Merits in Support thereof.
5. Concise Statement of the Proceedings and Facts to the Application for Leave to Appeal.
6. Additional Concise Statement of Proceedings and Facts by the Prosecuting Attorney of Monroe County, Michigan.
7. Brief Filed in Support of the Application for Leave to Appeal, in Accordance with Section 2 (e), Rule 60, of the Michigan Court Rules.
8. Certificate of the Circuit Court Judge to the Concise Statement of the Proceedings and Facts, Which is Basic of Jurisdiction of the Federal Supreme Court.
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10. Motion for a Rehearing of Order Denying Leave to Appeal and for Bail.
11. Affidavit in Support of Motion for a Rehearing.
12. Brief in Support of Motion for a Rehearing.
13. Notice of Hearing.
14. Supplement to Motion for a Rehearing and Supporting Affidavit.
15. "The State's Brief in Opposition to the Appellant's Application for Leave to Appeal and for Bail Pending Application for a Rehearing of the Same Issues Heretofore Decided Against the Appellant by the Supreme Court on July 25, 1956."
16. Order of Supreme Court of the State of Michigan Denying Application for Leave to Appeal and for Bail Pending Appeal, Dated July 24, 1956.
17. Order of Supreme Court of the State of Michigan Denying Motion for Rehearing, Dated October 1, 1956.

B.

CONCISE STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

In pursuance of State Rules of Practice and Procedure, in Criminal Cases, petitioner filed in the Court of the first instance, Timely Motion for a New Trial (Section 28.1099, 25 M. S. A., p. 455; Appendix, p. 2a); and afterwards Timely Application for Leave to Appeal, together with a Brief in Support thereof, in accordance with Rule 60, of the Michigan Court Rules (Honigman, Michigan Court Rules, pp. 594 to 604, inclusive; Michigan Court Rules Annotated, 1955 Pocket Part, pp. 100 to 103, inclusive); (Appendix, pp. 8a-13a, inclusive; 39a-47a, inclusive.)

We note specially, at this juncture, that the Application for Leave to Appeal, together with a Supporting Brief, were filed in the latter part of June, 1956; but that the State's Attorney, did not file his Brief in Opposition until August 31, 1956; or over one month after the Supreme Court's Order Denying Leave to Appeal, and after Motion for a Rehearing and a Supplement thereto, were filed on petitioner's behalf (Appendix, pp. 49a-56a).

The Order of the Supreme Court, in the first instance, rested on nothing in opposition, required by *Section 2 (e), Rule 60,* of the Michigan Court Rules.

We note, particularly, that the stage of proceedings at which the certain substantial Federal Questions were raised below—by way of Supplement to Motion for a Rehearing—was appropriate under State Appellate Practice (Rule 71, Michigan Court Rules of 1945); also, that Michigan, just as most States of the Union, has no Constitutional or Statu-

tory Provisions, by which a citizen may expressly challenge, as of right, a conviction obtained, in violation of the Constitution of the United States,—compare with the New York Constitutional and Statutory Provisions quoted in Note 5* to *Ellis v. Dixon,* 1955, 99 L. Ed. A., pp. 754-755.

C.

THE STATUTE ON WHICH THE JURISDICTION OF THIS COURT IS BASED

The Statute on which the jurisdiction of this Court is based, is Judicial Code, Section 237 (b), 28 U. S. C. A., Section 344 (b); 28 U. S. C., Section 1257 (3).

D.

QUESTIONS PRESENTED FOR REVIEW

1. Whether where, as in the instant case, Verdict of the Court sitting without a jury rests, in part, on a confession extorted from the accused, admittedly, while he was under the influence of intoxicating liquors, the requirements of the Due Process Clause of the Fourteenth Amendment, in respect of confessions have been met?

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* "5. New York has two methods of appeal to the Court of Appeals —an appeal as of right and by leave to appeal. An appeal as of right lies, *inter alia*, where there is 'directly involved the construction of the constitution of the state or of the United States * * *.' N. Y. Const., Art. 6, Section 7 (1); N. Y. Civ. Prac. Act, Section 588 (1) (a). In all cases in which an appeal does not lie as of right, appeal is by leave of the Appellate Division or the Court of Appeals. N. Y. Const., Art. 6, Section 7 (7); N. Y. Civ. Prac. Act, Section 589. Had wrong appellate procedure been the reason for the Court of Appeals' denial of leave to appeal, its decision would have rested on an adequate nonfederal ground, depriving this Court of jurisdiction. Cf. *Parker v. Illinois*, 333 U. S. 571, 92 L. ed. 886, 68 S. Ct. 708 (1948); *Central Union Tel. Co. v. Edwardsville*, 269 U. S. 190, 70 L. ed. 229, 46 S. Ct. 90 (1925)."

2. Whether where, as here, State Law makes *"intent"*, one of the essential elements of the crime charged, but the State presented no proof, *"at all"*, in substantiation of that element, the defendant could, consistently with Due Process of Law as guaranteed by the Fourteenth Amendment, be convicted of any crime?

3. Whether, even under State Law as bears on the facts, the action of the State Supreme Court in Denying Leave to Appeal, plus a Motion for Rehearing and Supplement thereto, constitutes a denial of due process under the Fourteenth Amendment, for being highly arbitrary and unreasonable?

E.

FEDERAL CONSTITUTIONAL PROVISION WHICH THE CASE INVOLVES

The Federal Constitutional Provision which the Case Involves, provides:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.
>
> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

F.

FEDERAL STATUTE INVOLVED

The pertinent provisions of Judicial Code, Section 237 (b), 28 U. S. C. A., Section 344 (b); 28 U. S. C., Section 1257(3), provides:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> "(3) By writ of certiorari, * * *, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution * * *."

1. State Statutes Involved.

(a) Michigan Statutes Annotated, *Section 27.44 (Judicature Act)*, provides:

> "Same; regulation of practice in cases not otherwise provided. Sec. 24. The supreme court shall amongst other things, regulate and prescribe the practice therein, and in the circuit courts, where the same is not prescribed by any statute, in relation to bills of exceptions, cases made by the parties, special verdicts, granting new trials, motions in arrest of judgment, taxation of costs, giving notice of special motions, and of such other proceedings as the court may think proper; staying proceedings when necessary to prevent injustice, and the hearing of motions, imposing terms, in their discretion, on granting such motions." (20 M. S. A. pp. 83-84.)

(b) Michigan Statutes Annotated, *Section 28.1096 (Code of Criminal Procedure)*, provides:

"Error in pleading or procedure; effect.

Section 26. No judgment or verdict shall be set aside or reversed or a new trial be granted by any court of this state in any criminal case, on the ground of misdirection of the jury, or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice." (25 M. S. A., p. 444.)

(c) Michigan Statutes Annotated, *Section 28.1098 (Code of Criminal Procedure)*, provides:

"New Trial; reasons for granting. Section 1. The Court in which the trial of any indictment shall be had may grant a new trial to the defendant, for any cause for which by law a new trial may be granted, or when it shall appear to the court that justice has not been done, and on such terms or conditions as the court shall direct." (25 M. S. A., pp. 446-447.)

(d) Michigan Statutes Annotated, *Section 28.1099 (Code of Criminal Procedure)*, provides:

"Same; time of motion. Section 2. Motions for new trials shall be made within thirty (30) days after verdict, and not afterwards." (25 M. S. A., p. 455.)

(e) Michigan Statutes Annotated, *Section 28.1100 (Code of Criminal Procedure)*, provides:

"Writ of error; issuance. Section 3. Writs of error in criminal cases shall issue only in the discretion of the Supreme Court or any justice thereof, on proper application therefor." (25 M. S. A., p. 456.)

(f) Michigan Statutes Annotated, *Section 28.1101 (Code of Criminal Procedure)*, provides:

> "Same; time to prepare statement, notice for settlement, limitation of time. Section 4. Any person desiring to secure a writ of error under the provisions of this act shall, within twenty (20) days after judgment, or within ten (10) days after denial of a motion for new trial, prepare a concise statement of what is involved in the case and the errors relied upon, and shall notice the same upon the prosecuting attorney for settlement before the trial judge, so that such statement may be amended, settled and signed by the trial judge within thirty (30) days after judgment or denial of motion for a new trial." (25 M. S. A., pp. 457-458.)

(g) Michigan Statutes Annotated, *Section 28.1103 (Code of Criminal Procedure)*, provides:

> "Same; presentation of statement to supreme court. Sec. 6. Such statement when settled and signed shall be presented to the supreme court or any justice thereof within ten (10) days after the same is so settled and signed, and shall be the basis of the application to the supreme court for a writ of error." (25 M. S. A., p. 459.)

(h) Michigan Statutes Annotated, *Section 28.1104 (Code of Criminal Procedure)*, provides:

> "Same; notice of decision of court. Section 7. Notice of the decision of the supreme court on such application for a writ of error shall forthwith be transmitted by the clerk of the supreme court to the prosecuting attorney and to the attorney for the defendant." (25 M. S. A., p. 459.)

(i) Michigan Statutes Annotated, *Section 28.1105 (Code of Criminal Procedure)*, provides:

"Same; admission to bail before decision on application. Sec. 8. During the time between judgment and the decision of the supreme court or any justice thereof on the application for a writ of error under this act, the trial judge may, in his discretion, admit the defendant to bail, if the offense charged is bailable." (25 M. S. A., p. 459.)

(j) Michigan Statutes Annotated, *Section 28.1106 (Code of Criminal Procedure),* provides:

"Same; admission to bail after granting of application. Sec. 9. Upon granting application for a writ of error the appellant may, in the discretion of the supreme court or any justice thereof, be admitted to bail, if the offense charged be bailable." (25 M. S. A., p. 460.)

2. Provisions of the Michigan Court Rules Involved.

"RULE 60

LEAVE TO APPEAL TO THE SUPREME COURT

Section 1. Leave to appeal to the Supreme Court shall be required in the following cases:

(a) Where such leave is expressly required by statute or rule; * * *

(c) Where a delayed appeal is sought; * * *

Section 2. To obtain leave to appeal to the Supreme Court from a court of record, appellant shall within the time limited for taking an appeal as of right (except when delayed appeal is sought);

(a) Prepare an application for leave to appeal, setting forth the reasons and grounds of appeal, and attach to it a concise statement of the proceedings and facts as far as they are material. In all cases

where error is alleged in the charge of the court, the whole of the charge shall be set up in the statement. It shall also contain the date of entry and a copy of the judgment, decree or order appealed from, and the opinion of the court, if one has been filed or dictated to the court reporter.

The application shall further state whether general appeal or appeal in the nature of mandamus, certiorari, prohibition, et cetera, is sought.

In criminal cases the application shall also state (1) the sentence imposed, and (2) if defendant desires bail pending appeal, the amount of bail set by the trial court pending application for leave to appeal, if any was set.

(b) Serve copy of the application and concise statement on all other parties, whether joint or adverse, with notice of prompt settlement of the statement before the trial judge or any other judge having jurisdiction to settle a bill of exceptions in the case. See Rule 66, Section 13.

(c) Objections to the concise statement shall be settled by the judge and, when satisfied, he shall certify that it fairly presents the questions for review.

A transcript of the testimony shall not be required as a basis for the settlement. The judge settling such statement may correct it or add matters of record which he may deem necessary to present the issue properly. When a discretionary action of the court is to be reviewed, the judge may add to the statement his reasons for such action. In case appellant shall object to corrections or additions made to the statement by the judge, he may further present, with his application, true copies of pleadings and exhibits relating to the question for review.

(d) *Promptly after the statement is settled and certified, appellant shall file the application and cer-*

tified statement with the clerk of the Supreme Court and notice it for hearing as a motion.

(e) With service of notice of hearing, *appellant shall serve on all other parties a typewritten or printed brief in support of such application and make proof of service thereof. Any party may file brief in opposition to the application.*"

"*RULE 71, SECTION 4*

Sec. 4. No application for rehearing will be considered by the Court unless the moving party shall, within 20 days from the filing of the opinion therein, cause any papers upon which it is based, together with his reasons for granting the same, to be printed, and 24 copies thereof to be filed with the clerk of this Court, and a copy thereof to be served upon the counsel for the opposite party. Proof of this service shall also be filed with the clerk. The party opposing may, within 10 days thereafter, file with the clerk 24 copies of his objections to the application, either printed or typewritten, as he may prefer; the Court will then examine the papers, and without further argument, unless specially ordered, will pass upon the application."

CONCISE STATEMENT OF THE CASE

On January 2, 1956, Joseph Rollins—hereinafter referred to as petitioner—was arrested in the basement of the Riviera Restaurant and Cocktail Lounge, located at 619 South Telegraph Road, City of Monroe, Monroe County, Michigan. At the time of his arrest, petitioner, as appears from the "*Concise Statement of the Proceedings and Facts*", as certified by the Trial Judge (Appendix, p. 14a-36a), was under the influence of intoxicating liquors and other alcoholic beverages. Three different Officers participated in petitioner's arrest, one of whom—Charles Mc-

Cormick, composed a statement against interest, which petitioner signed while still in a state of extreme intoxication.

On April 24, 1956 petitioner, having previously waived Trial by Jury, was brought before a Circuit Judge of the State of Michigan, who sat in Judgment on the case, without the aid of a Jury. In the course of the trial, the statement against interest hereinbefore referred to, was introduced in evidence, without objection from petitioner's counsel; but under highly peculiar circumstances. Officer McCormick in the preface of his main testimony, swore:

> "Q. Did you ask him what he was doing in the bar; what his purposes were?
> A. I did.
> Q. Do you recall what he told you?
> A. Yes; he said that he had, earlier in the evening, he had received a summons for speeding from the Sheriff's Department, two deputies from the Sheriff's Department; and then he had went to the Marcus Restaurant and he spent some time there; then he left the Marcus Restaurant and got into his car and wanted to find something to drink, and he proceeded down Telegraph Road to the Riviera, and parked his car in front of the Riviera and walked around through the parking lot alongside of the Bowl-O-Drome on to Stone Street, then walked up Stone Street to the rear of the Riviera *and broke the window with his fist and entered, looking for something to drink.*" (Appendix, p. 10a.)

And, at a later s' of his testimony, the following occurred:

> "Q. In connection with the interrogation of this prisoner, did he give you a signed written statement as to the reason, explaining his conduct on this night?
> A. He did.

(People's Exhibit 1 marked by Reporter.)

Q. Would you identify People's Exhibit No. 1, please? Tell the Court what that document is.

A. This is a statement I took from Joseph Rollins that evening.

Q. Did you write the statement yourself?

A. I did; that is my writing.

Q. Was it signed by Joseph Rollins?

A. Signed by Joseph Rollins and witnessed by myself and Officer Harold Moore.

Q. Is that the signature of Joseph Rollins on there that you observed him write?

A. That is. That is the one I observed him write.

Q. The Joseph Rollins we are talking about, is that the same person that is sitting alongside of Mr. Sanphilip?

A. It is.

Mr. Merman: If it please the Court, I would like to offer plaintiff's Exhibit No. 1.

The Court: It may be received.

Mr. Merman: May I read it into the record, Your Honor?

The Court: Go ahead."

The following is referred to, as containing facts material to the Questions Presented for Review:

1. Robert A. Smith, a witness for the State, swore, direct-examination:

"Q. On the evening of that night did you have occasion to hear a disturbance in the east end of that building?

A. Yes, we did.

Q. What was the nature of that disturbance?

A. It sounded like glass breaking.

Q. What, if anything, did you do to investigate that disturbance?

A. Well, my partner Mr. Doe said there must be someone trying to break in, so I made for the gun and the telephone to call the police." (Appendix, p. 21a.)

On cross-examination, the witness, swore:

> "Q. You have been in bars, I imagine, being that it is your profession, quite a bit and you are familiar with customers and the way they react to drink, possibly drugs; from your observation of his eyes, would you say that they appeared to be drugged, or that he appeared to be drugged or had been drinking?
>
> A. I don't really feel as if I am qualified to make a statement.
>
> Q. You said his eyes didn't focus properly.
>
> A. They just didn't look right to me; when the policeman had him I looked at his eyes, he looked like he was far away, he wasn't with us.
>
> Q. They weren't focusing, is that it? Yes or no.
>
> A. They weren't focusing." (Appendix, pp. 21a-22a.)

2. Carrol A. Moore, a Police Officer on the Monroe City Police Force, and witness for the State, testified as to the authenticity of petitioner's signature to the so-called confession; and, when questioned on cross-examination, swore:

> "A. He had been drinking some, yes; to my knowledge of seeing people that had been drinking, I would say that he had been drinking." (Appendix, p. 22a.)

3. Joseph Rollins, defendant below, petitioner here, interposed drunkenness as a defense and swore on direct and cross-examination:

> "Q. Will you state your full name, please?
>
> A. Joseph Rollins Duperron.
>
> Q. Where do you live?
>
> A. At 8500 North Telegraph Road.
>
> Q. How long have you been living in Monroe County?
>
> A. It will be two years in September.

Q. How old are you?

A. I will be 34 the 2nd of next month.

Q. Where are you employed?

A. I am employed at the Schukraft's Drive-In.

Q. What is your capacity of employment out there?

A. Manager.

Q. How long have you been employed by the Schukraft Drive-In in Monroe County?

A. The same length of time as I have lived in Monroe County.

Q. At the date of January 2, were you also employed at the Schukraft at that time or not?

A. Yes, I was.

Q. Were you employed anywhere else?

A. Yes, I was.

Q. And where was this?

A. At the Women's Hospital in Detroit.

Q. What was your capacity of employment up there? What was your job?

A. Dinner cook.

Q. Dinner cook?

A. Yes.

Q. On January 1, which is New Year's Day, on Sunday, where were you on that day? Start in the early morning.

A. Well, I got up at 4:30 in the morning and I went to Women's Hospital in Detroit because I had to be at work at 5:30, I had to prepare breakfast for the hospital, that is patients and help included, by myself. I got my breakfast, my dinner, and part of the supper out, and I got off at 1:30 that afternoon.

Q. Then where did you go?

A. Then I immediately drove to the Schukraft's Drive-In.

Q. What did you do there?

A. Well, they were pretty busy, so I put on my apron and worked there until about 2:00 o'clock that morning, the following morning.

Q. 2:00 o'clock on the 2nd?

A. On the 2nd.

Q. Then what did you do? Then what happened on the 2nd, starting from the early part of the day?

A. I don't remember the exact time that I started working that morning. I had a few hours rest and I worked until about 7:30 that evening, and Mrs. Schukraft said, 'Well, you might as well take the rest of the day off.'

Q. And then at 7:30 you were off, is that correct?

A. Well, during the day's procedure while I was working there was a lot of customers that I know, they came in wishing me a Happy New Year and asking me if I wanted a drink; and I don't drink on the job, so a few of the fellows told me they would be at such and such a bar; and I changed my clothes and went up to this bar in Flat Rock, which is the Little Pal Hotel.

Q. What bar is that?

A. The Little Pal Hotel.

Q. What did you do there?

A. Well, I drank double headers and beer for chasers, bought the bar tender drinks and bought a few people that I knew there drinks; and it was back and forth like that for, I don't remember the time, I wasn't paying much attention to it. * * *

Q. What is the store?

A. The restaurant there.

Q. This is Schukraft's?

A. Schukraft's. I met Brown in there and a few other friends that I knew, and I told them to come on out in the car and we will have a few beers.

Q. Did you have some beer in the car?

A. Yes, sir, I bought some beer. I don't know which bar that I bought it in; it was either the Little Pal or the Twin Pines because I didn't stop any place else.

Q. What happened then?

A. So Brown came out and we sat in the car and had a few beers. * * *

Q. What did you do then?

A. Well, I asked Brown if he wanted to stop at Twin Pines and have a few beers and wait for me

there. I told him while we were talking at Twin Pines, I said, 'I'll tell you what we'll do: we'll celebrate, really make a night of this.' He was away from home and he was a pretty good friend of mine.

Q. So who went down to Twin Pines?

A. Brown and I and this waitress Joyce that works at Schukraft's.

Q. All three of you went into Twin Pines?

A. No, sir, she waited in the car because she is too young to drink, and we went in the Twin Pines, Brown and I, and Miss Mohler waited in the car. We stayed in there maybe 15, 20 minutes, I don't know, I didn't pay any attention to the time. We drank a few beers, and I told him, I said, 'I'll try and buy some whiskey if I could.' I knew of a liquor store down the road on the way to taking Joyce home that sold whiskey, but didn't pay any attention to the time, I don't know how long it took me to get down there. And Brown waited in the Twin Pines for me to get back while I took Joyce, but on the way—.

Q. (Interrupting): How much money did you have on you that night when you were running around?

A. Close to a hundred dollars. * * *

Q. What was your original intention in going in that place?

A. Well, like I—

Q. (Interrupting): When you were trying the doors?

A. I wanted to buy some whiskey, I wanted to celebrate.

Q. You wanted to buy some whiskey?

A. Yes, sir.

Q. Then do you remember the police officer coming downstairs? Do you remember him down there?

A. No, no, I don't.

Q. Do you remember him taking you upstairs and handcuffing you or anything like that?

A. Well, I remember when they handcuffed me, taking me up, one of the officers, I don't know which

one it is, gave my wrist a pretty good twist with this clamp, I don't know what it is, but I told him, 'Take it easy.'

Q. Then what happened to you after the police officers toook you upstairs? Then where did you go?

A. Well, they put me and they took me outside and ran me through some buildings and they put me in the car.

Q. Then where did you go from there?

A. Right direct to the police station.

Q. What transpired down at the police station?

A, Well, they took everything away from me and took me in a room and they started asking questions and writing down stuff, and I was agreeing with everything. I didn't want to be—

Q. (Interrupting): Why did you agree with everything?

A. Well, I didn't want this Joyce to be involved because the officers had asked me if there was anybody with me, and I didn't want Miss Mohler to be involved. She is a young girl and she has never been in trouble, and she is a very good worker, and she supports her family. She is a very good girl and she has never been in any trouble, and I didn't want to get her involved.

Q. Did you read this statement that you signed.

A. No, sir.

Q. You just signed it and said that's it?

A. I just signed it. They did the talking and I agreed with them, and I just didn't bother. I was in no mood anyway.

Q. At any time from that time up until you first saw an attorney did you realize the seriousness of this charge?

A. No, sir. I thought I was being charged with drunk or breaking in or something or other like that. I didn't know they had this charge on me until I talked with you.

Q. When they took this statement, was that shortly after they brought you down to the police station?

A. Right away; right after they took my stuff away from me they took me in this room.

Q. How were you feeling at that time?

A. I didn't feel like talking to anyone.

Q. Ordinarily are you a drinking man?

A. No, sir, because I have an ulcerated stomach. * * *" *Direct Examination* (Appendix, pp. 23a-27a.)

* * * * *

"Q. Did you tell them that you broke the window of the town Pub with your fist and entered the building that way?

A. The way they wrote it I can't help it. I am not responsible for what is written on that sheet of paper.

The Court: The question is, did you tell them that?

A. I don't know if I have, your Honor; I was in no condition to say that I did or I didn't. I don't remember half of this stuff.

Q. Do you recall telling the officer that you hid under the steps?

A. No, sir. I said I fell down from the stairs and rolled under there as I was trying to get up.

Q. Well now, after you fell into the place, as you claim, I believe your testimony is you discovered somebody else was in there?

A. I don't know. When I tried the front door I know I seen people there; when I tried the back door I knew I seen people there. Where they went to when I got in I don't know.

Q. You have no idea?

A. Nobody talked to me. I didn't talk to anybody.

Q. Why did you run downstairs?

A. I didn't know if it was the place or not. Well, naturally when you are in a strange place, the condition I was, I didn't even know where the heck I was; I am trying to figure out where I am.

Q. You knew where you were when you tried the front door?

A. When I tried the front door the liquor was in my mind, that's all.

Q. *You are claiming you were so drunk you don't know what you were doing?*

A. *I am not claiming that, sir; I was feeling my oats.*

Q. *You mean you don't know you were in that bar that night?*

A. *Well, I was picked up there I know now.*

Q. You recall how you got in there, don't you?

A. Yes, sir.

Q. You fell through a window?

A. Yes.

Q. You recall going downstairs, don't you?

A. When I landed on the floor I banged my head. I had a cut to show the court last time. I banged my head on something when I fell, and I was groggy. The liquor was taking effect of me and I was dizzy; I couldn't focus anything; I couldn't make it out." *Cross-Examination* (Appendix, pp. 31a-32a.)

4. The Certified Concise Statement of the Proceedings and Facts, to Petitioner's Application for Leave to Appeal, contains the following uncontradicted statement of fact:

> "Mrs. Lillian Schukraft, one of the defendant's employers, testified, with reference to his state of intoxication on the night of January 2, 1956. * * *
>
> The second witness called to testify on behalf of defendant was, Mr. Edgar Ray Brown, a Sergeant in the United States Army, then stationed at Newport Road, Carleton, Michigan (T., p. 89). Sergeant Brown's testimony has to do (1) with defendant's state of intoxication on the night of January 2, 1956, * * *"

The Verdict of the Trial Court:

> "The Court: The charge against this defendant is on the 2nd day of January this year, he broke and entered a business place on Telegraph Road, this city and county.
>
> "*There is evidence that at the time this entry was effected defendant was intoxicated.* Voluntary intoxication is not, however, a defense for criminal action. It may be that if a person is sufficiently intoxicated so that he can't form a particular intent connected with a criminal statute that that is a defense. *Under all the evidence in this case, however, including the evidence of the defendant as to what his purpose was in going to this building, the Court is satisfied and beyond a reasonable doubt that he was not so intoxicated that he could not form the criminal intent.*
>
> "*Upon all the evidence, and applying to it the general rules of credibility, the court is satisfied and beyond a reasonable doubt that this defendant is guilty of the offense charged.* A verdict of breaking and entering in the night time with intent to commit larceny as charged in the information will enter, and the defendant will be remanded to the custody of the sheriff to await sentence." (Appendix, pp. 35a-36a.)

ARGUMENT IN AMPLIFICATION OF REASONS RELIED ON FOR ALLOWANCE OF THE PETITION

1. As already indicated, petitioner filed Timely Motion for a New Trial in the Court of the first instance, which, as a pleading, raised a substantial Federal Question on the face of the Record, as a matter of law.

This contention is pressed upon this Court in pursuance of its observations, as made in *Hebert v. Louisiana,* 1929,

272 U. S. 312, 47 S. Ct. 103,[1] and in accordance with the mental—as distinguished from the physical element—of the crime, as discussed by Mr. Justice Cooley in the early case of, *People v. Walker,* 1878, 38 Mich. 156,[2] and adhered to by the Michigan Supreme Court, as late as March,[3] 1955.

There is, therefore, no question of fact for this Court to consider as respects the findings of the Trial Judge both in the Trial and on the Motion for a New Trial. The Verdict of guilty in this case, is without any foundation in fact, of whatsoever kind.

2. This Court is not confronted with any question of fact, as respects whether or not the Appellate Proceedings prosecuted in the State Supreme Court, were pivoted solely on non-Federal grounds adequate to support that Court's Denial of the Application for Leave to Appeal, made in pursuance of Rule 60 of the Michigan Court Rules, *"cited supra;"* and of the Proceedings on Motion for a Rehearing and the Supplement thereto.

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[1] State action must "be consistent with fundamental principles of liberty and justice which lie at the base of all our civil and political institutions and not infrequently are designated *'law of the land.'* " (Italics supplied.)

[2] "The defendant was convicted in the court below for the larceny of a sum of money from one Martin. All the evidence in the case tended to show that if the defendant took the money wrongfully, it was while he was under the influence of liquor, and some of it indicated that he was very drunk."

"While it is true that drunkenness cannot excuse crime, it is equally true that when a certain intent is a necessary element in a crime, the crime cannot have been committed when the intent did not exist. In larceny the crime does not consist in the wrongful taking of the property, for that might be a mere trespass; but it consists in the wrongful taking with felonious intent; and if the defendant, for any reason whatever, indulged no such intent, the crime cannot have been committed. This was fully explained by Mr. Justice Christiancy in *Roberts v. People,* 19 Mich., 401, and is familiar law. See also *Nichols v. State,* 8 Ohio (N. S.), 435; *Regina v. Moore,* 3 C. & K., 319."

[3] *People v. Guillett,* 342 Mich. 1, cited to the Supreme Court below (Appendix, p. 45a).

It is to be noted that what was alleged in the Motion for a New Trial in the Circuit, and afterwards in the Application for Leave to Appeal to the Supreme Court, is not too amorphous to permit adjudication by this Court—on the Trial Judge's Certificate to the Concise Statement of the Proceedings and Facts, or upon the Supplement to the Motion for a Rehearing—of the Federal Constitutional Questions raised on the face of the pleadings below. Sufficiency of those pleadings, was not seriously questioned by the State's attorney, at any stage of the proceedings. The State Supreme Court, however, ignored the pleadings in general, and a Certified Statement of the Proceedings and Facts, in Particular: Wherein was Contained, Proof Positive, that petitioner was too intoxicated to form the criminal intent commanded by State Law.

The same questions which are presented here, were stated in the Supplement to the Motion for Rehearing, as follows:

> "1. That this Court in denying the Application for Leave to Appeal and for Bail Pending Disposition of Appeal, overlooked certain substantial facts which stand undisputed, and which facts raise the following questions:
>
> A. Whether where, as in the instant case, verdict of the court sitting without a jury rests, in part, on a confession extracted from the accused, while he was under the influence of intoxicating liquors, the requirements of the due process clause of the Fourteenth Amendment, in respect of confessions, have been met?
>
> B. Whether where, as here, State law makes '*intent*' one of the essential elements of the crime charged, but the State presented no proof, at all, in substantiation of that element, the defendant could, consistently with due process of law as guaranteed by the Fourteenth Amendment, be convicted of any crime?

C. Whether the Order of the Circuit Judge, Denying the Motion for a New Trial, constitutes, in the face of the Court's *'Findings of Fact,'* of the *'Concise Statement of the Proceedings and Facts'*, to the Application for Leave to Appeal, and of the People's *'Additional Concise Statement of Proceedings and Facts"*, plus the undisputed *'Statement of Facts'* set forth in applicant's *'Brief'*, filed in the Supreme Court, an arbitrary or unreasonable abuse of discretion."

All of the testimony, in the case shows, beyond dispute, that petitioner's actions before, at the time of, and after, alleged commission of the so-called crime, were not those of a sober person. Canvass of both the cases and books, in respect of confessions, discloses no instance similar to that with which this Court is presently confronted.

The most that might be urged on behalf of the State, in this connection, is that petitioner, while on the witness stand and under cross-examination, responded to a question propounded to him by the Prosecuting Attorney, as follows:

"Q. *You are claiming you were so drunk you don't know what you were doing?*
A. *I am not claiming that, sir; I was feeling my oats.*" (Appendix, p. 38a.)

Certainly, the answer given by petitioner to the question propounded, does not constitute any proof, "*at all*", against his claim that he was highly intoxicated at the time —according to his confession to the arresting officers—he broke a " * * *'glass window * * * with his fist * * *' " and entered this place to buy more whiskey; or, at the time, he is sworn to have made a statement against interest, to the arresting officers. It is not necessary for this Court now to sift the Record in search of facts on which the Constitutional Questions presented are premised. Neither is

is necessary for this Court now to put those questions in the Judicial Refinery, in order to determine whether or not they are merely academic, instead of novel or unique; substantial or unsubstantial. At no stage of the Trial or Appellate Proceedings, has the State made any showing, backed by evidence, of whatever kind, that petitioner's *"Defense of Intoxication"*, was not sustained, *"in toto"*. Furthermore, all of the State's evidence on the subject, shows that petitioner was too intoxicated to form the Criminal Intent: and, on the other hand, that the State was not justified, in using against him as evidence, a confession extorted from him in disobedience to the solemn mandates of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

CONCLUSION

For the reasons hereinbefore stated, it is hereby respectfully prayed that this Petition for a Writ of Certiorari to the Supreme Court of the State of Michigan, be granted by this Honorable Court, to the end that this cause may be reviewed and determined by this Court.

Respectfully submitted,

JAMES A. JAMESON,
Attorney for Petitioner,
1216 Beaubien Street,
Detroit 26, Michigan.

Dated at Detroit, Michigan,
November 8th, 1956.

ORDER OF SUPREME COURT DENYING APPLICATION FOR LEAVE TO APPEAL

STATE OF MICHIGAN—IN THE SUPREME COURT

The People of the State of Michigan, Plaintiff, v. Joseph Rollins, Defendant.	No. 46,963½.

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the twenty-fourth day of July in the year of our Lord one thousand nine hundred and fifty-six.

Present the Honorable John R. Dethmers, Chief Justice, Edward M. Sharpe, Talbot Smith, George Edwards, Emerson R. Boyles, Harry F. Kelly, Leland W. Carr, Eugene F. Black, Associate Justices.

In this cause an application is filed by defendant for leave to appeal from the judgment and sentence of the Circuit Court for the County of Monroe, and for bail pending appeal, and nothing in opposition thereto having been filed, and due consideration thereof having been had by the Court, it is ordered that the application and the motion for bail be and the same are hereby denied.

State of Michigan—ss.

I, Hugh H. Carpenter, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 25th day of July in the year of our Lord one thousand nine hundred and fifty-six.

Hugh H. Carpenter, Clerk.
By: DL Winters, Deputy Clerk

ORDER OF SUPREME COURT DENYING RECONSIDERATION OF ORDER DENYING APPLICATION FOR LEAVE TO APPEAL

STATE OF MICHIGAN—IN THE SUPREME COURT

The People of the State of Michigan,
Plaintiff,
v.
Joseph Rollins,
Defendant.

No. 46,963½.

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the first day of October in the year of our Lord one thousand nine hundred and fifty-six.

Present the Honorable John R. Dethmers, Chief Justice, Edward M. Sharpe, Talbot Smith, George Edwards, Emerson R. Boyles, Harry F. Kelly, Leland W. Carr, Eugene F. Black, Associate Justices.

In this cause a motion is filed by defendant for a reconsideration of the order heretofore entered herein on July 24, 1956, denying defendant's application for leave to appeal from the judgment of the Circuit Court for the County of Monroe, and a brief in opposition hereto having been filed, and due consideration thereof having been had by the Court, it is ordered that the order heretofore entered herein as aforesaid stand affirmed.

State of Michigan—ss.

I, Hugh H. Carpenter, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 2d day of October in the year of our Lord one thousand nine hundred and fifty-six.

Hugh H. Carpenter,
Clerk.

(Seal)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No.....

JOSEPH ROLLINS,
Petitioner,

vs.

STATE OF MICHIGAN,
Respondent

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

MOTION FOR A NEW TRIAL

STATE OF MICHIGAN—In the Circuit Court for the County of Monroe

The People of the State of Michigan, Plaintiff, v. Joseph Rollins, Defendant.	No. 10,473.

To the Honorable Clayton C. Golden, Monroe Circuit Judge:

Now comes Joseph Rollins, defendant in the above-entitled cause, by James A. Jameson, his attorney, and moves this Honorable Court to set aside its verdict of guilty entered herein, vacate the sentence imposed thereon, and grant a new trial hereon for the following reasons:

1. Because defendant was deprived of due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, and of Section 16, Article II of the Constitution of the State of Michigan, specifically as follows:

(a) He was denied a fair and impartial trial by reason of the court's partisan conduct as displayed in the course of the hearing which resulted in his conviction;

(b) He was subjected to admission in evidence, and to its consideration by the court as evidence, of a so-called confession written out by one of the arresting officers in the case;

and

(c) The court failed to question the voluntary or involuntary character of defendant's signing of the alleged confession, sua sponte.

II. Because the court fell into serious error, in misstating the law of this State, with reference to voluntary intoxication.

III. Because the verdict of the court sitting without a jury is against the great weight of evidence.

This motion is based on the files and record of this cause, and upon the affidavit of James A. Jameson, attorney for Joseph Rollins, defendant, hereto annexed.

Concurrently herewith, but separately herefrom, counsel presents a written brief on behalf of Joseph Rollins.

James A. Jameson,
Attorney for Joseph Rollins,
Defendant.

Dated: May 14th, 1956.

AFFIDAVIT IN SUPPORT OF MOTION FOR NEW TRIAL

State of Michigan,
County of Monroe—ss.

Deponent, James A. Jameson, being duly sworn on oath, deposes and says that he has been retained to act as attorney for Joseph Rollins, defendant in Criminal Action No. 10,473, who was convicted before the court sitting without a jury on April 24, 1956, and makes this affidavit in support of the foregoing motion for a new trial.

Deponent further says that on May 9, 1956, he received a certified copy of the transcript of the proceedings and trial had herein, and deponent verily believes, and has good reason to believe after a careful examination of such transcript, that Joseph Rollins, did not receive a fair and impartial trial as guaranteed by Federal and State Constitutions.

Deponent further says that the attached motion is filed in the best of good faith, and that he believes there is substantial merit to the same.

Further deponent says not.

James A. Jameson,
Deponent.

Subscribed and sworn to before me this 14th day of May, 1956.

George D. Raptieu,
Notary Public, Wayne County, Michigan.
Commission expires January 9, 1959.

FINDINGS OF THE COURT

STATE OF MICHIGAN—In the Circuit Court for the County of Monroe

The People of the State of Michigan, Plaintiff, v. Joseph Rollins, Defendant.	No. 10,473.

The Court: This is a motion for a new trial. It was noted for hearing the last miscellaneous day, last Friday afternoon. At that time the Court was informed that there was delivered to the Court a brief and argument in writing by the moving attorney. The matter was adjourned to give the Court an opportunity to examine the argument and brief submitted. The Court has done that. The motion as filed sets up five grounds.

(a) He was denied a fair and impartial trial by reason of the Court's partisan conduct as displayed in

the course of the hearing which resulted in his conviction;

Of course, that ground is wholly without fact or support in law. The defendant had a fair trial and was convicted.

(b) He was subjected to admission in evidence, and to its consideration by the court as evidence, of a so-called confession written out by one of the arresting officers in the case;

The so-called confession or admission was offered in evidence and received without objection. There was no question about whether it was voluntarily made. The defendant himself testified that he voluntarily made it; that he agreed to everything in it but he denied the truth of certain things contained in the said so-called admission or confession. The law is clear under the evidence received prior to the reception of this so-called admission or confession. The Court was, under the law, justified in receiving it in evidence. The fact that the defendant subsequently denied some matters contained in the written admission or confession were true, is a matter to be passed upon by the trier of the facts, but the matter of the confession was received wholly in accordance with the adjudicated decision of this state and was properly received and that ground is without merit.

(c) The court failed to question the voluntary or involuntary character of defendant's signing of the alleged confession, sua sponte.

This is denied for the same reason.

II. Because the court fell into serious error, in misstating the law of this State, with reference to voluntary intoxication.

The Court in giving his verdict stated in substance that voluntary intoxication is generally not an excuse for a crime; that if intoxication is of such extent that the defendant cannot form a specific intent included in the crimi-

nal statute, that would be a defense. The Court's statement was strictly within the rulings of the Supreme Court of this state. That ground is without merit.

III. Because the verdict of the Court sitting without a jury is against the great weight of evidence.

Examination of the record in this case would show that ground is without merit.

The Court having examined the brief and argument during the past week, is of the opinion that all the grounds set up in the motion for a new trial are wholly without merit under law or fact and the motion for a new trial will be denied.

State of Michigan,
County of Monroe—ss.

I, Virginia Johnson, a Notary Public in and for the County of Monroe, Michigan, hereby certify that the foregoing proceedings were taken by me in the aforementioned cause; that the same were transcribed by me from my shorthand notes; and I further certify that the said transcript is a true and correct transcript of said notes.

Virginia Johnson.

ORDER DENYING MOTION FOR A NEW TRIAL

STATE OF MICHIGAN—In the Circuit Court for the County of Monroe

The People of the State of Michigan, Plaintiff, v. Joseph Rollins, Defendant.	No. 10,473.

At a session of said Court held in the Court House in the City of Monroe, Monroe County, Michigan on May 25, 1956.

Present: Honorable Clayton C. Golden, Circuit Court Judge.

On reading the motion of James A. Jameson for a new trial and the same having been duly brought on to be heard, after listening to the argument of James A. Jameson and considering the brief submitted, and the Court being fully advised in the premises, and having stated the reasons for denial in detail in the record, It is ordered that said motion for new trial be and the same is hereby denied.

Clayton C. Golden,
Circuit Court Judge.

APPLICATION FOR LEAVE TO APPEAL WITH STATEMENT OF REASONS AND GROUNDS OF APPEAL

STATE OF MICHIGAN—IN THE SUPREME COURT

Appeal in Criminal Case from the Circuit Court for the County of Monroe

Honorable Clayton C. Golden, Presiding Judge

The People of the State of Michigan, Plaintiff-Appellee, v. Joseph Rollins, Defendant-Appellant.	No.

To the Michigan Supreme Court:

Now comes Joseph Rollins, defendant-appellant herein, by James A. Jameson, his attorney, and moves this Honorable Court to Grant him Leave to Appeal from the Verdict of the Lower Court by which he was Adjudged to be Guilty on April 24, 1956, of breaking and entering in the nighttime—*"with intent to commit larceny,"* and also from the Opinion and Order of the Lower Court, entered on May 25, 1956, Denying Timely Motion for a New Trial, and, as Reasons and Grounds therefore, states:

1. That the learned Circuit Court Judge, in his express conduct exhibited in the trial and proceedings had without a Jury, withheld a fair and impartial trial as secured by Section 16, Article II of the Michigan Constitution, and also by the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

II. That the learned Circuit Court Judge, committed a serious abuse of his legal discretion, specifically as follows:

(a) In Finding that appellant, broke and entered a building in the nighttime "* * *with intent to commit larceny" * * * absent, any evidence of the People, rebutting the special defense of drunkenness as interposed;

(b) In Denying Timely Motion for a New Trial in the absence of any showing on the part of the People, that a gross miscarriage of justice, did not result in appellant's conviction;

and

(c) In Refusing to follow precedents of this Court, set in similar cases, wherein the facts were identical with those in the present case; and, particularly the law governing intent as recently reiterated by this Court in *People v. Guillett,* 1955, 342 Mich. 1, at 5.

James A. Jameson,
Attorneys for Joseph Rollins,
Defendant-Appellant.

Dated: Detroit, Michigan,
June 1st, 1956.

AFFIDAVIT OF MERITS

State of Michigan,
County of Wayne—ss.

Deponent, James A. Jameson, being duly sworn on oath, deposes and says that late in April, 1956, he was retained to act as counsel for Joseph Rollins, defendant in Criminal Action No. 10-473, Circuit Court for the County of Monroe; that immediately thereafter, deponent ordered the transcript of the proceedings and trial which had terminated in defendant's conviction, and on May 9, 1956, a copy of said transcript, was obtained.

Deponent further says that after a careful study of the trial transcript, he became convinced, that a gross miscarriage of justice had resulted in Rollins' conviction by the Circuit Judge, sitting without a Jury, as well as in his commitment to serve two (2) to fifteen (15) years in the State Prison; that on or about May 16, 1956, deponent filed in the Circuit on Behalf of Rollins, a Timely Motion for a New Trial, which, subsequent thereto, was heard on oral argument, in part, and Denied on May 25, 1956.

Deponent further says, that it appears from the transcript, that an officer on the Monroe Police Force, wrote out in longhand an alleged confession, which he commanded defendant to sign, well knowing that the defendant then, at that time, was under the influence of liquor and other alcoholic beverages; that this same officer, himself testified that defendant was under the influence of intoxicating liquor, but the Circuit Judge, nevertheless, permitted the following to transpire:

> "Q. When you got the person known as Joseph Rollins down to the police station did you interview him or interrogate him?
>
> A. I did.
>
> Q. Did you ask him what he was doing in the bar, what his purposes were?
>
> A. I did.
>
> Q. Do you recall what he told you?
>
> A. Yes; he said that he had earlier in the evening he had received a summons for speeding from the Sheriff's Department; two deputies from the Sheriff's Department; and then he had went to the Marcus Restaurant and got into his car and wanted to find something to drink, and he proceeded down Telegraph Road to the Riviera and parked his car in front of the Riviera and walked around through the parking lot alongside the Bowl-O-Drome on to Stone Street, then walked up Stone Street to the rear of the Riviera and broke the window with his fist and entered, looking for something to drink.

Q. In connection with the interrogation of this prisoner, did he give you a signed written statement as to the reason, explaining his conduct on this night?

A. He did.

(People Exhibit 1 marked by Reporter.)

Q. Would you identify People's Exhibit No. 1 please? Tell the Court what document that is.

A. This is a statement I took from Joseph Rollins thta evening.

Q. Did you write the statement yourself?

A. I did; that is my writing.

Q. Was it signed by Joseph Rollins?

A. Signed by Joseph Rollins and witnessed by myself and Officer Harold Moore.

Q. Is that the signature of Joseph Rollins on there that you observed him write?

A. That is. That is the one I observed him write.

Q. The Joseph Rollins we are talking about, is that the same person that is sitting alongside of Mr. Sanphilip?

A. It is.

Mr. Merman: If it please the Court, I would like to offer Plaintiff's Exhibit No. 1.

The Court: It may be received.

Mr. Merman: May I read it into the record, your Honor?

The Court: Go ahead.

Mr. Merman: 'Jan. 2, 1956.

My name is Joseph Rollins, I am 32 yrs. old and I live at 8500 N. Telegraph Rd. Newport, Mich. I make this statement to the Monroe Police without any aid of threats or promises.

This evening around 8:30 p. m., I received a summons from the Sheriff's Dept. for speeding. The Officers stopped me as I was going into my driveway at my home. I then went into the Marcus Drive-In on Telegraph Road, as I am employed there as Mgr. I stayed there for about 30 or 45 min., and then went outside and got into my car and drove S. on Telegraph Rd. I was very mad about getting the summons for speeding. I parked my car in front of the New Riviera

on Telegraph Rd. and walked through the parking lot next to the Bowl-O-Drome to Stone St. I walked up Stone St. to the Town Pub. I wanted something to drink and was feeling pretty good so I broke the window of the Town Pub with my fist and entered the building. When I entered the building I saw someone was in there and so I ran down to the basement. I hid under the steps and that is where the Police found me.

I have read this statement and find it to be true to the best of my knowledge.

Signed Joseph Rollins. Witness: Charles A. McCormick and Carrol A. Moore.'

That is all."

Deponent further says, that of the six witnesses called on behalf of the People, four, testified, either on direct or cross-examination, that defendant was intoxicated; that in addition thereto, defendant's testimony as to the high state of intoxication in which he found himself on the night of January 2, 1956—the night of commission of the alleged crime—was supported by that of a respected U. S. Army Sergeant, with whom defendant had drank in the earlier part of the evening; that notwithstanding the fact defendant's defense stood uncontradicted, the learned Circuit Court Judge found:

"The Court: The charge against this defendant is on the 2nd of January this year, he broke and entered a business place on Telegraph Road, this city and county.

There is evidence that at the time this entry was effected defendant was intoxicated. Voluntary intoxication is not, however, a defense for criminal action. It may be that if a person is sufficiently intoxicated so that he can't form a particular intent connected with a criminal statute that that is a defense. Under all the evidence in this case, however, including the evidence of the defendant as to what his purpose was in going to this building, the Court is satisfied and

beyond a reasonable doubt that he was not so intoxicated that he could not form the criminal intent.

Upon all the evidence, and applying to it the general rules of credibility, the Court is satisfied and beyond a reasonable doubt that this defendant is guilty of the offense charged. A verdict of breaking and entering in the nighttime with intent to commit larceny as charged in the information will enter, and the defendant will be remanded to the custody of the sheriff to await sentence."

Deponent further says, as an absolute fact, that the transcript does not, in the least degree, substantiate, the Circuit Judge's Verdict.

Deponent says, also, as an undisputable fact, that the transcript is entirely barren of any testimony which supports the Circuit Judge's Verdict.

Deponent further says that the inexperience of defendant's counsel, constitutes no good reason, for Denying *"Substantial Justice"* to defendant.

Further deponent says not.

James A. Jameson,
Deponent.

Subscribed and sworn to before me, this 1st day of June, 1956.

(Sgd.) George D. Raptieu,
Notary Public, Wayne County, Michigan.
Commission Expires: January 9, 1959.

CONCISE STATEMENT OF THE PROCEEDINGS AND FACTS

On January 2, 1956, defendant herein—Joseph Rollins—was found by police officers in the basement of Riviera Restaurant and Cocktail Lounge, located at 619 South Telegraph Road, Monroe, Michigan (T., p. 3; T., p. 8).

On the same day, one Charles McCormick, an officer on the Monroe City Police Force, and the officer who arrested defendant at the scene, wrote out after defendant had been removed to Police Headquarters, a certain statement which was signed by defendant. On the trial of this cause, which was begun, without a Jury, on April 24, 1956, and completed on the same day, the following occurred (Police Officer McCormick, testifying, T., pp. 39 to 41, Inclusive):

"Q. Do you recognize the man in court that you found concealed under the stairway?

A. I do, sitting next to Mr. Sanphilip.

Q. Did you discover what this man's name was?

A. I did.

Q. Is it Joseph Rollins?

A. Joseph Rollins.

Q. To your knowledge is that the only name that this man is known by?

A. No, he goes by another name.

Q. Do you recall what that name is?

A. I do not.

Q. Did you inquire as to what he was doing under the stairway there?

A. Well, evidently he was hiding from me.

Q. Did you pull him out from under the stairway?

A. I did.

Q. Put handcuffs on him?

A. Yes, I put a restrainer on him, or an iron claw.

Q. Did you frisk him?

A. I did.

Q. Did he have any weapons on him?

A. He had no weapons.

Q. Any burglar tools or anything like that?
A. None.
Q. Did you take him out of the basement then?
A. I did.
Q. Where did you proceed with him?
A. Sir?
Q. Did you take him out of the restaurant building?
A. I took him out of the restaurant and placed him in a police car and took him to the city jail.
Q. Officer, did you make an examination of the restaurant before you left on that night?
A. No, I didn't.
Q. Or the bar?
A. I did not.
Q. When you got the person known as Joseph Rollins down to the police station did you interview him or interrogate him?
A. I did.
Q. Did you ask him what he was doing in the bar, whta his purposes were?
A. I did.
Q. Do you recall what he told you?
A. Yes; he said that he had, earlier in the evening he had received a summons for speeding from the Sheriff's Department, two deputies from the Sheriff's Department; and then he had went to the Marcus Restaurant and he spent some time there; then he left the Marcus Restaurant and got into his car and wanted to find something to drink, and he proceeded down Telegraph Road to the Riviera, and parked his car in front of the Riviera and walked around through the parking lot alongside of the Bowl-O-Drome on to Stone Street, then walked up Stone Street to the rear of the Riviera and broke the window with his fist and entered, looking for something to drink."

And, later (T., pp. 41 to 42, *Inclusive*):

"Q. In connection with the interrogation of this prisoner, did he give you a signed written statement as to the reason, explaining his conduct on this night?
A. He did.

(People's Exhibit 1 marked by Reporter.)

Q. Would you identify People's Exhibit No. 1 please? Tell the Court what that document is.

A. This is a statement I took from Joseph Rollins that evening.

Q. Did you write the statement yourself?

A. I did; that is my writing.

Q. Was it signed by Joseph Rollins?

A. Signed by Joseph Rollins and witnessed by myself and Officer Harold Moore.

Q. Is that the signature of Joseph Rollins on there that you observed him write?

A. That is. That is the one I observed him write.

Q. The Joseph Rollins we are talking about, is that the same person that is sitting alongside of Mr. Sanphilip?

A. It is.

Mr. Merman: If it please the Court, I would like to offer Plaintiff's Exhibit No. 1.

The Court: It may be received.

Mr. Merman: May I read it into the record, your Honor?

The Court: Go ahead."

John V. Doe, a witness for the People, and an associate proprietor of the Riviera Restaurant and Cocktail Lounge, at the time of the alleged crime in question, testified, in part, as follows:

"Q. What was your occupation on the 2nd day of January, 1956?

A. I was also in my present job and a part owner of the Riviera Restaurant and Cocktail Lounge.

Q. Where is that particular business located, sir?

A. 619 South Telegraph, Monroe, Michigan.

Q. Is it in the City of Monroe?

A. City of Monroe.

Q. I refer you to the 2nd day of January, 1956, were you in your place of business known as the Riviera Restaurant on that day and date?

A. I was in the evening.

Q. About what time in the evening, sir?

A. We went there at approximately 8:00 o'clock to do some book work as we customarily did.

Q. Was the Riviera Restaurant open for business on that day and date at that time?

A. It was not.

Q. It was the day after New Year's, wasn't it?

A. Yes, sir.

Q. While you were doing these books did you have occasion to hear a disturbance at the east end of that building?

A. We did.

Q. What was the nature of the sounds that you heard?

A. First there was the—what appeared to be someone rattling the door." • • •

"Q. Other than the rattling of the doors did you hear anything?

A. Yes, I did.

Q. What was it, sir?

A. The first thing we heard as we come upstairs after doing the books we heard glass breaking.

Q. Could you come to a conclusion whether that was on the west end of the building or the east end of the building?

A. It was on the east end of the building.

Q. And upon hearing this glass breakage, what, if anything, did you do?

A. Well, I didn't do anything; primarily at the moment I was going into the kitchen to turn off some of the lights in the restaurant part, and I stopped for a moment and asked Mr. Smith if he had heard anything, and he said he heard some disturbance at the rear door just a very short time before that.

Q. Who is this Mr. Smith you are speaking of, sir?

A. He is my partner in the business at that time.

Q. And he was there at the same time on that same day?

A. Yes, sir." • • •

"Q. After you heard this glass breaking and had the conversation with your partner, Smith, what did you do, if anything?

A. What did I do?

Q. Yes.

A. Well, I proceeded into the kitchen and turned off two lights that were on in the restaurant part; I believe it was two; anyway, some lights." • • •

"Q. After you turned the lights out, what did you do?

A. I turned around then and started back out towards the rear of the building, towards the cocktail lounge and as I got in the area of the door and once again I heard glass breaking.

A. This door you are speaking of is between the kitchen and the cocktail bar?

A. That is right.

Q. What kind of a door is it?

A. It's a swinging door.

Q. Solid panel?

A. There's a glass in it approximately 8 x 10 or some such a size; otherwise it's solid.

Q. When you got to the door and heard this glass breaking did you make any further observations of the bar room?

A. Well, I immediately called for Mr. Smith and I said, 'I believe someone is breaking in here. Have you got the gun?' He said, 'Yes, I have.' And he was at the—that would be the west end of the bar at that time.

Q. And following that did you hear any further noises?

A. Yes, with that he sort of ducked down in the dark at the end of the bar and I stepped back into the kitchen.

Q. Were there any lights on in the kitchen?

A. No, not that I recall. Normally there wouldn't be.

Q. After you did that, what observations did you make?

A. Well then the sound—we heard a sound as if someone were raising the window on the east end of the building, that is directly in back of the band stand. Then I see the Venetian Blinds move inward; and there were a couple of boxes of Christmas trimmings, or something in boxes there, that was right in front of the window, and with that the gentleman sitting across here stepped into where I could see that it was a man in a dark suit.

Q. Did this man do anything further?

A. He walked to the edge of the band stand and looked around briefly and stepped over and proceeded to the east end of the bar.

Q. Now, as he was walking across there, was he walking into this lighter area?

A. Yes, he walked in a lighter area fairly close to being beneath the light that was on the eastern end of the ceiling.

Q. When he did that did you have an opportunity to observe his facial characteristics?

A. Yes, I did; I would say fairly well.

Q. Could you identify that person that you saw in the bar that night?

A. Yes, sir.

Q. Do you see him in Court here today?

A. I do.

Q. Will you please point him out to the Court?

A. The gentleman with the black suit and the high hair line is the gentleman whom we are talking about.

Q. After he walked over to the end of the bar what observation of him did you make, and will you please tell the Court what you saw?

A. There was a cigar—an empty cigar box on the end of the bar; he opened the lid, closed it and took a look behind the bar, I believe he took a step in the direction towards the west, and then he had a handkerchief in his hand and he wiped his hands a bit, and then turned around and opened the door at the east end of the bar and went down in the basement.

Q. After he did this, what, if anything, did you do?

A. Well, immediately we locked the door after him.

Q. Who do you mean by 'we'?

A. Mr. Smith was at the other end of the bar and he joined me and we locked the door, and then we immediately went back to the other stairway, which is located in the kitchen, and more or less made sure that no one came up there." • • •

Q. Did you call the police?

A. Yes, I believe that they was.

Q. You did not do it personally?

A. No, Mr. Smith called the police I believe, as he mentioned to me that he had; I believe it was while I went into—.

Q. (Interrupting): If you actually don't know—but somebody did call, the police did arrive?

A. That is right. Yes, Mr. Smith called them." • • •

"Q. With regard to this back window that was entered, was that to your knowledge locked?

A. Yes, it was.

Q. Will you describe it to the Court, what kind of a window it is, drapery, curtains, or what have you around it?

A. Well, it's a standard two glass window.

Q. Like in a normal home?

A. Yes, I would say just approximately the size of the glass would be possibly 18 inches by 2 foot each pane, just approximately. It appeared as if—well, first of all the glass that was broke was the upper glass.

Q. Where is the latch located?

A. In the center at the framework between the two glasses, half way up the window.

Q. These windows slide up and down vertically?

A. Yes.

Q. How high is the lower window sill off the pavement, or the sidewalk?

A. It is approximately waist high on myself, which would be about 4½ to 5 feet.

Q. On the inside of the window what are the arrangements? Have you got drapes or curtains, or what have you?

A. There is actually Venetian blinds, and there are drapes inside of that.

Q. What kind of blinds are they, wooden or metal?

A. They are aluminum.

Mr. Merman: That is all." (T., pp. 3-4-5-6-7-8-9-10-11).

Robert A. Smith, another witness for the People, and partner of Mr. Doe, gave testimony in substantive corroboration of that given by Mr. Doe. In the course of his testimony, Mr. Smith said (T., p. 27):

"Q. On the evening of that night did you have occasion to hear a disturbance in the east end of that building?

A. Yes, we did.

Q. What was the nature of that disturbance?

A. It sounded like glass breaking.

Q. What, if anything, did you do to investigate that disturbance?

A. Well, my partner Mr. Doe said there must be someone trying to break in, so I made for the gun and the telephone to call the police."

On re-cross examination, the witness swore (T., pp. 34-35):

"Q. You have been in bars, I imagine, being that it is your profession, quite a bit and you are familiar with customers and the way they react to drink, possibly drugs; from your observation of his eyes, would you say that they appeared to be drugged, or that he appeared to be drugged or had been drinking?

A. I don't really feel as if I am qualified to make a statement.

Q. You said his eyes didn't focus properly.

A. They just didn't look right to me; when the policeman had him I looked at his eyes, he looked like he was far away, he wasn't with us.

Q. They weren't focusing, is that it? Yes or no.

A. They weren't focusing."

It is conceded for all practical purposes of this statement, that the witness, Doris Smith, identified defendant-appellant, Joseph Rollins, as the person who had broke and entered the Rieviera Restaurant and Cocktail Lounge on the night of January 2, 1956 (T., pp. 35-36).

It is likewise conceded, that the witness, Marie Doe, identified defendant-appellant, Joseph Rollins, and swore that neither she, her husband, nor Mr. or Mrs. Smith, invited Mr. Rollins to enter their place of business (T., p. 47).

Carrol A. Moore, an officer on the Monroe City Police Force, testified, with reference to his participating in the arrest of defendant and to the authenticity of defendant's signature as it appeared on *People's Exhibit No. 1 ("Statement against Interest"*, T., pp. 49-50). On cross-examination, Officer Moore, testified further with reference to his taking charge of defendant's car, which he drove to Police Headquarters (T., pp. 50-51). When asked "Had Mr. Rollins been drinking?" • • • Officer Moore, answered:

"A. He had been drinking some, yes; to my knowledge of seeing people that had been drinking, I would say that he had been drinking" (T., p. 51).

Mr. John G. Vargo, another Officer on the Monroe City Police Force, testified for the People, in part, as follows:

"Q. Did you examine a window on the northeast corner of the building?

A. I did.

Q. In what condition did you find that window?

A. There was a hole broken in the window.

Q. Were you present in the bar when Officer McCormick came out of the basement with the person?

A. Yes, I was.

Q. Can you identify that person who came out of the basement with Officer McCormick?

A. Yes, I can.

Q. Will you do that, please?

A. The gentleman sitting next to Mr. Sanphilip."

Defendant took the witness stand in his behalf, and swore on direct-examination, as follows:

"Q. Will you state your full name, please?

A. Joseph Rollins Duperron.

Q. Where do you live?

A. At 8500 North Telegraph Road.

Q. How long have you been living in Monroe County?

A. It will be two years in September.

Q. How old are you?

A. I will be 34 the 2nd of next month.

Q. Where are you employed?

A. I am employed at the Schukraft's Drive-In.

Q. What is your capacity of employment out there?

A. Manager.

Q. How long have you been employed by the Schukraft Drive-In in Monroe County?

A. The same length of time as I have lived in Monroe County.

Q. At the date of January 2, were you also employed at the Schukraft at that time or not?

A. Yes, I was.

Q. Were you employed anywhere else?

A. Yes, I was.

Q. And where was this?

A. At the Women's Hospital in Detroit.

Q. What was your capacity of employment up there? What was your job?

A. Dinner cook.

Q. Dinner cook?

A. Yes.

Q. On January 1, which is New Year's Day, on Sunday, where were you on that day? Start in the early morning.

A. Well, I got up at 4:30 in the morning and I went to Women's Hospital in Detroit because I had to be at work at 5:30, I had to prepare breakfast for the hospital, that is patients and help included, by myself. I got my breakfast, my dinner, and part of the supper out, and I got off at 1:30 that afternoon.

Q. Then where did you go?

A. Then I immediately drove to the Schukraft's Drive-In.

Q. What did you do there?

A. Well, they were pretty busy, so I put on my apron and worked there until about 2:00 o'clock that morning, the following morning.

Q. 2:00 o'clock on the 2nd?

A. On the 2nd.

Q. Then what did you do? Then what happened on the 2nd, starting from the early part of the day?

A. I don't remember the exact time that I started working that morning. I had a few hours rest and I worked until about 7:30 that evening, and Mrs. Schukraft said, "Well, you might as well take the rest of the day off.'

Q. And then at 7:30 you were off, is that correct?

A. Well, during the day's procedure while I was working there was a lot of customers that I know, they came in wishing me a Happy New Year and asking me if I wanted a drink; and I don't drink on the job, so a few of the fellows told me they would be at such and such a bar; and I changed my clothes and went up to this bar in Flat Rock, which is the Little Pal Hotel.

Q. What bar is that?

A. The Little Pal Hotel.

Q. What did you do there?

A. Well, I drank double headers and beer for chasers, bought the bar tender drinks and bought a few people that I knew there drinks; and it was back

and forth like that for, I don't remember the time, I wasn't paying much attention to it.

Q. Then what did you do? How long did you stay at the Little Pal Hotel, as much as you can remember?

A. Approximately a half an hour.

Q. Then where did you go?

A. Then I was headed towards Monroe, that is south on Telegraph. I stopped at the Dewberry Inn and met friends there and we drank; they bought me drinks, I bought them drinks, showing everybody a Happy New Year, and so forth." • • •

"Q. Then what did you do after that?

A. Well, I went into the store.

Q. What is the store?

A. The restaurant there.

Q. This is Schukraft's?

A. Schukraft's. I met Brown in there and a few other friends that I knew, and I told them to come on out in the car and we will have a few beers.

Q. Did you have some beer in the car?

A. Yes, sir, I bought some beer. I don't know which bar that I bought it in; it was either the Little Pal or the Twin Pines because I didn't stop any place else.

Q. What happened then?

A. So Brown came out and we sat in the car and had a few beers." • • •

"Q. So what did you do then?

A. Well, I asked Brown if he wanted to stop at Twin Pines and have a few beers and wait for me there. I told him while we were talking at Twin Pines, I said, 'I'll tell you what we'll do: we'll celebrate, really make a night of this.' He was away from home and he was a pretty good friend of mine.

Q. So who went down to Twin Pines?

A. Brown and I and this waitress Joyce that works at Schukraft's.

Q. All three of you went into Twin Pines?

A. No, sir, she waited in the car because she is too young to drink, and we went in the Twin Pines,

Brown and I, and Miss Mohler waited in the car. We stayed in there maybe 15, 20 minutes, I don't know, I didn't pay any attention to the time. We drank a few beers, and I told him, I said, 'I'll try and buy some whiskey if I could.' I knew of a liquore store down the road on the way to taking Joyce home that sold whiskey, but I didn't pay any attention to the time, I don't know how long it took me to get down there. And Brown waited in the Twin Pines for me to get back while I took Joyce, but on the way—.

Q. (Interrupting): How much money did you have on you that night when you were running around?

A. Close to a hundred dollars." * * *

"Q. What was your original intention in going in that place?

A. Well, like I—

Q. (Interrupting) When you were trying the doors?

A. I wanted to buy some whiskey, I wanted to celebrate.

Q. You wanted to buy some whiskey?

A. Yes, sir.

Q. Then do you remember the police officer coming downstairs? Do you remember him down there?

A. No, no I don't.

Q. Do you remember him taking you upstairs and handcuffing you or anything like that?

A. Well, I remember when they handcuffed me, taking me up, one of the officers, I don't know which one it is, gave my wrist a pretty good twist with this clamp, I don't know what it is, but I told him, 'Take it easy.'

Q. Then what happened to you after the police officers took you upstairs? Then where did you go?

A. Well, they put me and they took me outside and ran me through some buildings and put me in the car.

Q. Then where did you go from there?

A. Right direct to the police station.

Q. What transpired down at the police station?

A. Well, they took everything away from me and took me in a room and they started asking questions and writing down stuff, and I was agreeing with everything. I didn't want to be—.

Q. (Interrupting) Why did you agree with everything?

A. Well, I didn't want this Joyce to be involved because the officers had asked me if there was anybody with me, and I didn't want Miss Mohler to be involved. She is a young girl and she has never been in trouble, and she is a very good worker, and she supports her family. She is a very good girl and she has never been in any trouble, and I didn't want to get her involved.

Q. Did you read this statement that you signed?

A. No, sir.

Q. You just signed it and said that's it?

A. I just signed it. They did the talking and I agreed with them, and I just didn't bother. I was in no mood anyway.

Q. At any time from that time up until you first saw an attorney did you realize the seriousness of this charge?

A. No, sir. I thought I was being charged with drunk or breaking in or something or other like that. I didn't know they had this charge on me until I had talked with you.

Q. When they took this statement was that shortly after they brought you down to the police station?

A. Right away; right after they took my stuff away from me they took me in this room.

Q. How were you feeling at that time?

A. I didn't feel like talking to anyone.

Q. Ordinarily are you a drinking man?

A. No, sir, because I have an ulcerated stomach * * *."

And, on cross-examination:

"Q. Now, you tried the front door of this place, is that right?

A. That's right.

Q. And nobody answered, is that it?

A. That's right.

Q. It was locked and you tried the back door and that was locked too?

A. Yes, sir.

Q. Was it dark out at this time?

A. I didn't hear.

Q. Was it dark out at the time you were doing this?

A. Well, there was a lot of lights around the place and everything is all lit up around there.

Q. Will you explain to me again how you happened to stick your hand through this window?

A. I pulled on the door and there's a window next to the door where you can look into the place; I seen people walking around there; and I went back and tried the door; nobody came; so then I spun around and I got kind of woozy and my hand went through the window when I spun around; I was close to the building.

Q. What window are you talking about, sir?

A. The one that I fell through.

A. Q. Is that the one that you described as being the one you were peering through?

A. No, sir, that is one right next to it, this level.

Q. How far from the door is that?

A. I don't know how many feet; I never measured.

Q. There is at least one window between the door and the one that you were viewing?

A. Yes, there's one where you can see in between the door and this other window.

Q. Which hand did you stick through the window?

A. My right hand; this left one caught on to the side of the frame of the window of the building.

Q. In other words, you were gyrating in a complete revolution?

A. What do you mean by that?

Q. You were turning all the way around, you were spinning?

A. Yes, sir.

Q. You stuffed your hand through the window, is that right?

A. Yes, sir.

Q. You were standing there with your right hand —?

A. Through the window.

Q. You were standing there with your right hand inside the building?

A. Yes, sir.

Q. Why didn't you pull it out?

A. I was caught by my coat. The glass was caught in the coat. That's what I was trying to get untangled.

Q. What was your coat caught on?

A. On glass, and I didn't want to rip my coat.

Q. In order to untangle it what did you do?

A. I turned this notch here; there's a notch right where my hand was, turned the notch, pulled it down a little bit.

Q. Pulled what down?

A. The top part of the windoow. Then I lifted the bottom up past the top. In other words, I pushed the bottom window all the way past the top, past the bottom—the top past the bottom.

Q. Was your coat still stuck in the window as you were pushing?

A. I was like that, yes (indicating). Then when I had it level to where I could work on it—.

Q. (Interrupting): Did you break the entire glass out of the top part of the window?

A. No, sir. I don't know how much was broken of it.

Q. Was your hand caught on part of the top or part of the bottom?

A. I don't know how to explain it. There's a frame of the window here right in the middle, and there was prongs of glass from the frame sticking into me, into my clothes; that's why I pulled it down. I lifted the top up to get it out so I could work from the inside to get my coat out.

Q. Was it caught on the top window or the bottom window?

A. I said the top.

Q. Now, was your hand inside or outside the building?

A. It was inside when it was caught on the top part of the window to begin with.

Q. How did you get the bottom part of the window to go up past your hand?

A. I pulled the top a little bit down as far as my hand would go. In other words, the frame here would go so far, then I lifted it up, the bottom part up.

Q. When you lifted the bottom part up your hand was no longer inside the building?

A. When I what?

Q. When you lifted the bottom part up your hand was no longer protruding through the window?

A. It wasn't protruding; my coat was stuck on the glass, then I pulled it in and lifted the top out and the bottom part and worked with this hand from the inside and got it out, got my coat out. I didn't want to rip my clothes.

Q. Why was it impossible to work with your hand from the outside without fooling around with the other part of the window?

A. I don't know why.

Q. And what was required so that you picked the coat up with your left hand to disengage it, is that right?

A. I don't know, sir.

Q. You have no idea?

A. No, sir.

Q. After you raised the lower part of the window you went catapulting into the building, is that right?

A. I was kind of leaning on the bottom frame of the window; I got dizzy, was groggy, and I fell in.

Q. What were you doing sitting on this window sill?

A. While I was trying to work my coat out of the torn piece of glass there.

Q. Did you get up on the window sill before or after you opened the lower part of the window?

Q. When I got the bottom partially up I was leaned up against it, I had part of my body on the sill.

Q. Were you leaning in the building or out of the building?

A. Well, I don't know that.

Q. Did you tell the officers that you went into the building to get a drink?

A. Well, they might have got the impression that I—.

Q. (Interrupting): I am not interested in their impression; did you tell them that?

A. That I went in to buy a drink?

Q. That's what you told them?

A. That's right.

Q. Did you tell them that you broke the window of the Town Pub with your fist and entered the building that way?

A. The way they wrote it I can't help it. I am not responsible for what is written on that sheet of paper.

The Court: The question is, did you tell them that?

A. I don't know if I have, your Honor; I was in no condition to say that I did or I didn't. I don't remember half of this stuff.

Q. Do you recall telling the officer that you hid under the steps?

A. No, sir. I said I fell down from the stairs and rolled under there as I was trying to get up.

Q. Well now, after you fell into the place, as you claim, I believe your testimony is you discovered somebody else was in there?

A. I don't know. When I tried the front door I know I seen people there; when I tried the back door I knew I seen people there. Where they went to when I got in I don't know.

Q. You have no idea?

A. Nobody talked to me. I didn't talk to anybody.

Q. Why did you run downstairs?

A. I didn't know if it was the place or not. Well, naturally when you are in a strange place, the condition I was , I didn't even know where the heck I was; I am trying to figure out where I am.

Q. You knew where you were when you tried the front door?

A. When I tried the front door the liquor was in my mind, that's all.

Q. You are claiming you were so drunk you don't know what you were doing?

A. I am not claiming that, sir; I was feeling my oats.

Q. You mean you don't know you were in that bar that night?

A. Well, I was picked up there I know now.

Q. You recall how you got in there, don't you?

A. Yes, sir.

Q. You fell through a window?

A. Yes.

Q. You recall going downstairs, don't you?

A. When I landed on the floor I banged my head. I had a cut to show the court the last time. I banged my head on something when I fell, and I was groggy. The liquor was taking effect of me and I was dizzy; I couldn't focus anything; I coudln't make it out.

Q. As I understand your direct testimony, you went to this door because you thought it was an exit, is that right?

A. Because I thought what?

Q. It was an exit, a method of getting you out of the saloon, a door to get out of the building?

A. Yes, that's after I got off the floor,

Q. You examined the rest of the possible exits, did you?

A. I didn't see no other exit.

Q. Did you see the back door you had been trying to get in?

A. That's what I was looking for; that's what I thought it was when I seen this light here.

Q. When you opened the door do you recall seeing a stairway going down into the basement?

A. That's right.

Q. Did you start down that stairway?

A. I did.

Q. You thought there was an exit in the basement somewhere?

A. I did. I figured it led outside. I didn't know where it led. I didn't know it was a basement.

Q. You could see the stairs weren't going any other direction than down?

A. Any direction going down is down, yes.

Q. You were going down, you knew that. Tell me, why didn't you go out the same way you came in?

A. I don't know why.

Q. When you were standing in the middle of the dance floor were you aware that you had fallen through a window?

A. I can't recall that. I can't remember much about that.

Q. After you fell through the window why didn't you get up and go right back out? You knew that all the doors in the place were closed, didn't you, locked?

A. I assumed they were.

Q. You knew, as a matter of fact, in trying them, didn't you?

A. That's right, I tried 'em.

Q. You don't recall the police calling down in the basement and telling you to come out of there, is that right?

A. No, sir.

Q. Do you recall seeing a police officer while you were down in the basement?

A. Yes, sir, when they pulled me out from under the stairs and put the handcuffs on me.

Q. What were you doing under the stairs?

A. I fell from the stairs down. When I went to get up I hit my head on the stairs and I was down like that with my hand, I am trying to get out of this predicament (indicating).

Q. If you are going to get out, why did you stay there under the stairway?

A. I just got through telling you I hit my head on the stairs or something, and I fell off the stairs; you just don't recuperate just like this when you fall down the stairs and bang your head on the stairs.

Q. Was there any light on that stairway?
A. There was from the top.
Q. You mean you were going into a dark basement or dark area below at the foot of the stairs, is that what you mean?
A. I don't mean anything like that. All I mean is there was a light up on top and I could see down the stairs.
Q. How did you happen to fall off of it?
A. I just slipped, that's all.
Q. Because of darkness or your own inability to walk?
A. Maybe it was that. I don't know.
Q. What?
A. I was feeling good and dizzy, and groggy. I couldn't make out where I was. All I knew was I wanted to get out of there; that's all."

Mrs. Lillian Schukraft, one of defendant's employers, testified, with reference to his state of intoxication on the night of January 2, 1956. Also, with reference to defendant's reputation in the community. On cross-examination, the witness swore:

"Q. Do you know that Mr. Rollins' name is Duperron, not Rollins?
A. I do now, yes, sir.
Q. Did you know that before this prosecution was commenced?
A. You mean before this trouble?
Q. Yes.
A. No, I didn't.
Q. When you hired him did you know he had any criminal record at all?
A. No, I didn't.
Q. Does the fact that he has been convicted of two different felonies affect your opinion of him one way or the other?
A. No, sir.
Q It doesn't make any difference to you at all?
A. No.
Mr. Merman: That is all" (T., p. 88).

The second witness called to testify on behalf of defendant was Mr. Edgar Ray Brown, a Sergeant in the United States Army, then stationed at Newport Road, Carleton, Michigan (T., p. 89). Sergeant Brown's testimony has to do (1) with defendant's state of intoxication on the night of January 2, 1956, (T., pp. 89-90); and (2) with defendant's reputation in the community (T., p. 90).

Mr. Earl Emerick, the third witness produced on behalf of defendant below, testified, that he had been a resident of Monroe County, Michigan, all his life; that he was a farmer, but was employed at the Ford Motor Company on the side; that he was acquainted with defendant, and had been for a period of two years; that he was familiar with the neighborhood of Mr. Rollins' residence in Monroe County; that he was acquainted in Newport and was familiar with Mr. Rollins' general reputation and also his character; that he was familiar with defendant's general reputation for truth and veracity; also, for fair dealing; that the same was good.

On cross-examination the witness swore:

> "Q. The fact that there are two felony convictions in Mr. Duperron's life, does that affect your opinion of him?
>
> A. No, they don't affect the opinion of honesty that I know about him.
>
> Mr. Merman: That is all."

Officer McCormick was re-called to witness stand and gave what is described by the Assistant Prosecutor, as rebuttal testimony.

With the foregoing, the case was concluded as to each side without oral argument.

The following comprises the Court's Verdict of Guilty:

> "The Court: The charge against this defendant is on the 2nd day of January this year, he broke and entered a business place on Telegraph Road, this city and county.
>
> There is evidence that at the time this entry was effected defendant was intoxicated. Voluntary intoxi-

cation is not, however, a defense for criminal action. It may be that if a person is sufficiently intoxicated so that he can't form a particular intent connected with a criminal statute that that is a defense. Under all the evidence in this case however, including the evidence of the defendant as to what his purpose was in going to this building, the Court is satisfied and beyond a reasonable doubt that he was not so intoxicated that he could not form the criminal intent.

Upon all the evidence, and applying to it the general rules of credibility, the Court is satisfied and beyond a reasonable doubt that this defendant is guilty of the offense charged. A verdict of breaking and entering in the nighttime with intent to commit larceny as charged in the information will enter, and the defendant will be remanded to the custody of the sheriff to await sentence."

On May 16, 1956, there was filed on behalf of appellant in the Circuit, a Timely Motion for a New Trial, together with a Supporting Memorandum Brief, with Due Notice to, and Service of copies of all Papers upon, the Monroe County Prosecutor.

Partial Hearing of the Motion was had on May 18, 1956. On May 25, 1956, the Court heard further argument in brief; and, on the same day Denied the Motion for a New Trial. The Lower Court at the time Denied, also, appellant's written Motion for Bail. Attached hereto, and made a component hereof, are certified copies of the Lower Court's Opinion and Order in Denial of the Motion for a New Trial.

Respectfully submitted,

James A. Jameson,
Attorney for Joseph Rollins,
Defendant-Appellant.

Dated: Detroit, Michigan,
June 12th, 1956.

ADDITIONAL CONCISE STATEMENT OF PROCEEDINGS AND FACTS

STATE OF MICHIGAN—In the Circuit Court for the County of Monroe.

The People of the State of Michigan,
Plaintiff,
v.
Joseph Rollins,
Defendant.

The defendant, on direct examination, admitted serving four years in the Ohio Reformatory for Breaking and Entering with intent to commit larceny, and eighteen months in a North Carolina Chain Gang for Assault with a Deadly Weapon (T., 63); and that he did not finish his parole (T., 64).

Exhibit 1 was admitted in evidence and is set forth in full as follows:

> "My name is Joseph Rollins, I am 32 yrs. old and I live at 8400 N. Telegraph Rd. Newport, Mich. I make this statement to the Monroe Police without any aid of threats or promises.
>
> This evening around 8:30 p. m. I received a summons from the Sheriff's Dept. for speeding. The officer stopped me as I was going into my driveway at my home. I then went into the Marcus Drive-in on Telegraph Rd. as I am employed there as Mgr. I stayed there for about 30 or 45 min. and then went outside and got into my car and drove S. on Telegraph Rd. I was very mad about getting the summons for speeding. I parked my car in front of the New Riviera on Telegraph Rd. and walked through the parking lot

next to the Bowl-O-Drome to Stone St. I walked up Stone St., to the Town Pub. I wanted something to drink and was feeling pretty good so I broke the window of the Town Pub with my fist and entered the building. When I entered the building I saw someone was in there and so I ran down to the basement. I hid under the steps and that is where the Police found me. I have read this statement and find it to be true to the best of my knowledge.

Signed Joseph Rollins.

Witness:
Charles A. McCormick and
Carrol A. Moore" (T., 42 and 43).

The defendant on cross examination stated the purpose of going to the place in question was to buy whiskey by the bottle and not by the glass and that his suit coat caught on the broken window glass and to reelase his coat he turned the latch and litfed the bottom portion of the window and while leaning on the window frame fell inside (T., 70).

Defendant admitted telling the officer after being apprehended in the basement as follows:

"Q. Did you tell the officers that you went into the building to get a drink?

A. Well, they might have got the impression that I—

Q. (Interrupting): I am not interested in their impression, did you tell them that?

A. That I went in to buy a drink?

A. That's what you told them?

A. That's right" (T., 71).

Further on cross examination, defendant answered as follows:

"Q. You are claiming you were so drunk you don't know what you were doing?

A. I am not claiming that, sir; I was feeling my oats" (T., 72).

CERTIFICATE

I, Clayton C. Golden, Judge of the Circuit Court for the County of Monroe, before whom the above-entitled cause was tried on April 24, 1956,

Do Hereby Certify , That after due notice I have settled the foregoing as a concise statement of facts in support of an application for leave to appeal, and I further certify that said statement fairly presents the questions for review in said cause.

Clayton C. Golden,
Circuit Judge.

Dated: Monroe, Michigan,
June 21st, 1956.

BRIEF ON BEHALF OF THE APPELLANT IN SUPPORT OF THE APPLICATION FOR LEAVE TO APPEAL

STATE OF MICHIGAN—IN THE SUPREME COURT
Appeal in Criminal Case from the Circuit Court for the County of Monroe

Honorable Clayton C. Golden, Presiding Judge

The People of the State of Michigan, Plaintiff-Appellee, v. Joseph Rollins, Defendant-Appellant.	No.

I.

STATEMENT OF FACTS

On April 24, 1956, the above-named appellant, Joseph Rollins, was convicted by Honorable Clayton C. Golden, Monroe Circuit Judge, sitting without a jury, of breaking and entering in the nighttime.

On April 27, 1956, appellant was sentenced to serve not less than two (2) nor more than fifteen (15) years, in the State Prison of Southern Michigan, at Jackson; hence, the presentation on behalf of appellant, of an Application for Leave to Appeal, with this Brief in Support thereof.

On January 2, 1956, appellant was arrested in the basement of the Riviera Restaurant and Cocktail Lounge, located at 619 South Telegraph Road, Monroe, Michigan.

There was undisputed testimony on behalf of the People to the effect, that appellant broke a glass window in this building, with his fist, and entered the same. No serious issue was raised at trial with respect to whether appellant had entered the building in question.

Appellant interposed drunkenness as his defense, which is suported by one of the police officers, who arrested him, and also one of the proprietors of the building, appellant is claimed to have broke and entered in the nighttime, with intent to commit larceny, as well as by appellant's undisputed testimony, plus that of two other persons who testified on his behalf. The People presented no testimony in rebuttal.

One Charles McCormick, the police officer who arrested appellant on the night of January 2, 1956, composed a statement against interest, which appellant signed while under the influence of beer and whiskey. This statement was introduced in evidence without objection. The following occurred:

"Q. Did you ask him what he was doing in the bar, what his purposes were?

A. I did.

Q. Do you recall what he told you?

A. Yes; he said that he had, earlier in the evening he had received a summons for speeding from the Sheriff's Department, two deputies from the Sheriff's Department, two deputies from the Sheriff's Department; and then he had went to the Marcus Restaurant and he spent some time there; then he left the Marcus Restaurant and got into his car and wanted to find

something to drink, and he proceeded down Telegraph Road to the Riviera, and parked his car in front of the Riviera and walked around through the parking lot alongside of the Bowl-O-Drome on to Stone Street, then walked up Stone Street to the rear of the Riviera and broke the window with his fist and entered, looking for something to drink."

And, later (T., pp. 41 to 42, inclusive):

"Q. In connection with the interrogation of this prisoner, did he give you a signed written statement as to the reason, explaining his conduct on this night?

A. He did.

(People's Exhibit 1 marked by Reporter.)

Q. Would you identify People's Exhibit No. 1 please? Tell the Court what that document is.

A. This is a statement I took from Joseph Rollins that evening.

Q. Did you write the statement yourself?

A. I did; that is my writing.

Q. Was it signed by Joseph Rollins?

A. Signed by Joseph Rollins and witnessed by myself and Officer Harold Moore.

Q. Is that the signature of Joseph Rollins on there that you observed him write?

A. That is. That is the one I observed him write.

Q. The Joseph Rollins we are talking about, is that the same person that is sitting alongside of Mr. Sanphilip?

A. It is.

Mr. Merman: If it please the Court, I would like to offer Plaintiff's Exhibit No. 1.

The Court: It may be received.

Mr. Merman: May I read it into the record, your Honor?

The Court: Go ahead."

In the course of the trial the learned Circuit Court Judge, expressed the view that defense counsel, was taking up too much of the Court's time, with special observation, that

the trial must be completed on the same day of commencement. The learned Judge referred to the overcrowded condition of the calendar. He expressed impatience at defense counsel's attempt to defend to the best of his ability, but none as to the prejudicial effort put forth by the prosecution. The following occurred on cross-examination of appellant by the Assistant Prosecuting Attorney:

"Q. Now, where were you born?
A. In Canada.
Q. Are you a United States citizen?
A. I am, through my people; my mother and father were Americans, I was just born there, that's all.
Q. Did you register in 1940 with the United States Government under the Alien Registration Act?
A. No, sir.
Q. You have no registration under that act?
A. No, sir.
Q. Did you tell the officers that arrested you that you were born in Detroit?
A. I don't remember, sir.
Q. Is it possible you did?
A. Probably did.
Q. Why would you tell them that?
A. I didn't want them to know that I had this record.
Q. This wasn't the first time you were arrested, was it?
A. No, I have been arrested a couple of times before that."

In reaching his adverse verdict the learned Circuit Court Judge, said:

"The Court: The charge against this defendant is on the 2nd of January this year, he broke and entered a business place on Telegraph Road, this city and county.

There is evidence that at the time this entry was effected defendant was intoxicated. Voluntary intoxication is not, however, a defense for criminal action.

It may be that if a person is sufficiently intoxicated so that he can't form a particular intent connected with a criminal statute that that is a defense. Under all the evidence in this case, however, including the evidence of the defendant as to what his purpose was in going to this building, the Court is satisfied and beyond a reasonable doubt that he was not so intoxicated that he could not form the criminal intent.

Upon all the evidence, and applying to it the general rules of credibility, the Court is satisfied and beyond a reasonable doubt that this defendant is guilty of the offense charged. A verdict of breaking and entering in the night time with intent to commit larceny as charged in the information will enter, and the defendant will be remanded to the custody of the sheriff to await sentence."

On or about May 16, 1956, Motion for a New Trial on behalf of appellant was filed in the Circuit by his present counsel, together with a Brief in Support thereof. The Motion for a New Trial states:

"1. Because defendant was deprived of due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, and of Section 16, Article 11 of the Constitution of the State of Michigan, specifically as follows:

(a) He was denied a fair and impartial trial by reason of the court's partisan conduct as displayed in the course of the hearing which resulted in his conviction;

(b) He was subjected to admission in evidence, and to its consideration by the court as evidence, of a so-called confession written out by one of the arresting officers in the case;

and

(c) The court failed to question the voluntary or involuntary character of defendant's signing of the alleged confession, sua sponte.

II. Because the court fell into serious error, in misstating the law of this State, with reference to voluntary intoxication.

III. Because the verdict of the court sitting without a jury is against the great weight of evidence.

This motion is based on the files and record of this cause and upon the affidavit of James A. Jameson, attorney for Joseph Rollins, defendant, hereto annexed.

Concurrently herewith, but separately herefrom, counsel presents a written brief on behalf of Joseph Rollins."

The Prosecuting Attorney filed no Answer, or anything else, in Opposition to the Motion for a New Trial.

On May 25, 1956, the Motion for a New Trial was, by Opinion and Order of the Circuit Court Judge, Denied.

II.

ARGUMENT

For the purpose of the Application for Leave to Appeal, we adopt the following from the Brief filed below, in Support of the Motion for a New Trial:

"(d) Matter bearing on the Court's Position In Regard to the '*Mens Rea*', and its Adverse Conclusion, Purportedly Based on All of the Evidence in the Case.

1. It is argued on behalf of Joseph Rollins, that the Court's statement, in regard to the '*mens rea*', is both confusing and incorrect. The learned Court, after considering the defense interposed on behalf of Rollins, says that,

'Voluntary intoxication is *not,* however, *a defense for criminal action.* * * *'

and adds that,

'It may be that if a person is sufficiently intoxicated so that he can't form a *particular intent* connected with a criminal statute that that is a defense. • • •'

In a recent case (*People v. Guillett,* 1955, 342 Mich. 1), our Supreme Court said (p. 5):

'A consideration of later Michigan authority reveals that Roberts v. People, supra, remains as the most eloquent and correct statement of law on the subject. Thus in People v. Walker, 38 Mich. 156, 158, Justice Cooley wrote an opinion reversing a conviction of larceny stating:

' "While it is true that drunkenness cannot excuse crime, it is equally true that when a certain intent is a necessary element in a crime, the crime cannot have been committed when the intent did not exist. In larceny the crime does not consist in the wrongful taking of the property, for that might be a mere trespass; but it consists in the wrongful taking with felonious intent; and if the defendant, for any reason whatever, indulged no such intent, the crime cannot have been committed. This was fully explained by Mr. Justice Christiancy in Roberts v. People, 19 Mich. 401, and is familiar law." '

It would seem to appear from the foregoing, and we do argue, that the Court's position is both correct and incorrect; and, therefore, confusing.

2. It is next argued on behalf of Joseph Rollins, as argued in the forepart of this brief, that there is *'no evidence'*, to support the Court's conclusion to the effect '• • • that he (Rollins) was not so intoxicated that he *could not form the criminal intent.* • • •' It is to be noted that the Court considers '• • • *all the evidence* • • •' and proceeds to apply it to '• • • the general rules of credibility • • •' being '• • • satisfied • • • beyond a reasonable doubt • • • that defendant is guilty of the offense charged. • • •'

It is to be noted further, that, in this case the People presented *'no evidence whatever'* on the issue of intoxication and, therefore, *'none'*, on the co-relevant isue, of *'intent'*. Consequently, and, since the People failed to *'negative'* the defense interposed, we are unable to see by virtue of what *'general rules of credibility* * * *' or by virtue of what *'rule of evidence'*, the Court found, *'beyond a reasonable doubt'*, that defendant *'* * * was not so intoxicated* that he could not *form the criminal intent* * * *'.

Mr. Greenleaf on Evidence Defines it as follows:

'Evidence, in legal acceptation, includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved.' Greenleaf on Evidence, 16th Ed., Sec. 1.

Applying this Definition, then, to the case at bar, can it be said that the Court, being fully cognizant of the rule which requires the People to prove the charge against an accused *'beyond all reasonable doubt'* did not fall into serious erorr, in reaching its adverse verdict, absent, evidence on behalf of the People showing that defendant had failed to sustain the *'special defense'*, interposed?

It is our position that not only was it incumbent upon the People to prove the charge laid, but that it also was especially incumbent upon them to disprove the *'special defense'*, interposed.

So far as we have been able to discover it never has been held by the Supreme Court of this State, that it is not essential in every case of this kind, that the People, disprove the *'special defense'* invoked, *'beyond a reasonable doubt.'* A careful reading of all the cases, which bear on the subject-matter, would tend to demonstrate beyond question, we submit, that the burden of proof is always on the People, and not upon the accused, as seems to have been supposed in the instant case. Not only did the People fail to prove the presence of intent in the mind of defendant, at time of

commission of the alleged crime; but they also failed to prove, by the direct testimony of their own witnesses, that he entered this building with the intent to commit larceny. See '*Gillespie*', Michigan Criminal Law and Procedure, Vol. pp. 472-473, cases cited in *Footnotes.*"

III.

RELIEF

By reason of the foregoing, it is hereby respectfully submitted on behalf of Joseph Rollins, appellant, that his conviction and sentence in the Lower Court, resulted in a gross miscarriage of justice; and that this Honorable Court, accordingly, should grant him Leave to Appeal.

Respectfully submitted,

James A. Jameson,
Attorney for Joseph Rollins,
Appellant.

Dated: Detroit, Michigan,
June .., 1956.

NOTICE OF HEARING ON MOTION FOR A REHEARING

STATE OF MICHIGAN—IN THE SUPREME COURT

The People of the State of Michigan, Plaintiff-Appellee, v. Joseph Rollins, Defendant-Appellant.	No. 46,963½.

To: Wm. J. Braunlich, Jr., Esq.,
Monroe County Prosecutor,
315 Court House,
Monroe, Michigan

Sir:

Please Take Notice, That we have this day mailed to the Clerk of the Supreme Court, at Lansing, Motion for a Rehearing of the Supreme Court's Order Denying our Application for Leave to Appeal, and for Bail Pending Appeal, copy of which, together with copies of an Affidavit and Brief in Support thereof, are annexed hereto for your convenience.

Very truly yours,

James A. Jameson,
Attorney for Joseph Rollins,
Defendant-Appellant,
1216 Beaubien Street,
Detroit 26, Michigan.

Dated: Detroit, Michigan,
July 27th, 1956.

MOTION FOR A REHEARING

STATE OF MICHIGAN—IN THE SUPREME COURT

The People of the State of Michigan, Plaintiff-Appellee, v. Joseph Rollins, Defendant-Appellant.	No. 46,963½.

To the Honorable, the Michigan Supreme Court:

Now comes Joseph Rollins, defendant and appellant herein, by James A. Jameson, his attorney, and moves that the Court grant a Rehearing on its Order of July 24, 1956, wherein his Application for Leave to Appeal and for Bail Pending Appeal was Denied, for the following reasons:

1. Because the Court, apparently, has overlooked entirely the salient points of law arising under the facts of this case.

2. Because the action of the Circuit Court Judge, throughout his conduct of the trial had without a jury, served to deprive defendant of substantial justice and of fair-play.

3. Because this Court, apparently, has overlooked the fact that the Prosecuting Attorney, after due Notice, filed nothing in opposition either to the Application for Leave to Appeal or to the Motion for Bail, and, therefore, has overlooked its own decisions in respect to judicial discretion.

By reason of the foregoing, it is respectfully prayed specially, that a Rehearing hereof may be had, and that

Pending Disposition of this Motion, defendant and appellant, may be at liberty in Bail.

James A. Jameson,
Attorney for Joseph Rollins,
Defendant-Appellant,
1216 Beaubien Street,
Detroit 26, Michigan.

Dated: Detroit, Michigan,
July 27th, 1956.

AFFIDAVIT IN SUPPORT OF MOTION FOR A REHEARING

State of Michigan,
County of Wayne—ss.

James a Jameson, being duly sworn on oath, deposes and says that he has read the attached Motion for a Rehearing by him drafted and subscribed on behalf of Joseph Rollins, defendant and appellant, and he verily believes this Court upon a more close examination of the Facts and of the Briefs of Law filed in connection with this matter, will Reconsider its Order of July 24, 1956.

Deponent further says that the Motion for a Rehearing is filed in good faith and not for the purpose of delay, only.

Further deponent says not.

James A. Jameson, Deponent.

Subscribed, and sworn to before me this 27th day of July, 1956.

Peter Bill, Sr.,
Notary Public, Wayne County, Michigan.
Commission Expires: January 27, 1958.

BRIEF IN SUPPORT OF THE MOTION FOR A REHEARING

STATE OF MICHIGAN—IN THE SUPREME COURT

The People of the State of Michigan, Plaintiff-Appellee, v. Joseph Rollins, Defendant-Appellant.	No. 46,963½.

I.

FACTS

The salient facts are believed to be sufficiently stated in the papers heretofore filed.

II.

ARGUMENT

We do not believe that this Honorable Court, in Denying Leave to Appeal in this Case, and the Motion for Bail, followed its own Decisions in Respect to the Exercise of a Sound Judicial Discretion

It is respectfully submitted, under the salient facts of this case, that this Honorable Court, in Denying the Application for Leave to Appeal and the Motion for Bail Pending Disposition of the Application for Leave, exercised a sound judicial discretion.

In this connection, then, the following is quoted from the decision of this Court in the case of *(Wilson v. State Board of Registration,* 1928, 228 Mich. 25, at 27-28):

> "They may exercise their discretion but it must be exercised upon the facts before them. In speaking of

the exercise of judicial discretion it was said by Chief Justice Marshall in Osborn v. United States Bank, 9 Wheat. (U. S. 738, 866):

'Judicial power, as contradistinguished from the power of the laws, has no existence. Courts are the mere instruments of the law, and can will nothing. When they are said to exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law; and, when that is discerned, it is the duty of the court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the judge; always for the purpose of giving effect to the will of the legislature; or, in other words, to the will of the law.'

"In the S. S. Styria v. Morgan, 186 U. S. 1 (22 Sup. Ct. 731), the court had under consideration the exercise of the discretion of the master of a ship, and it was said:

'The good faith of the master and his reasonable exercise of discretion must be considered and determined in the light of the facts in each particular case. The term discretion implies the absence of a hard-and-fast rule. The establishment of a clearly defined rule of action would be the end of discretion, and yet discretion should not be a word for arbitrary will or inconsiderate action. "Discretion means a decision of what is just and proper in the circumstances." Bouvier's Law Dict. "Discretion means the liberty or power of acting without other control than one's own judgment." Webster's Dict.

'Courts, in passing upon such questions, should endeavor to put themselves in the position of the actors in the transaction, and not be ready to find that the course actually pursued was blameworthy because the results were unfortunate; what those concerned have a right to demand of a master, when confronted with unexpected emergencies, is not an infallible but a deliberate and considerate judgment.'

"In Taylor v. Robertson, 16 Utah, 330 (52 Pac. 1), it was said:

'Discretion, when vested in an officer, however, does not mean absolute or arbitrary power. The discretion must be exercised in a reasonable manner, and not maliciously, wantonly, and arbitrarily to the wrong and injury of another. This is said to be the rule applicable to public officers who are bound to exercise their deliberate judgment in the discharge of their official duties, and is applicable to all inferior magistrates and others called to the performance of functions in their nature and character quasi-judicial, while acting within their jurisdiction and the legal scope of their powers as fixed by law.'

"See, also, Tripp v. Cook, 26 Wend. (N. Y.) 143, 152; Ex parte Chase, 43 Ala. 303; 1 Bouvier's Law Dict.; 2 Words and Phrases (2d Series), 64."

III.

RELIEF

It is respectfully submitted, on behalf of Joseph Rollins, defendant and appellant, that a gross miscarriage of justice resulted in his conviction and sentence, and that this Honorable Court, ought not to condone such without affording defendant and appelant a full hearing to the merits.

Accordingly, we would respectfully ask that the Court enter upon a Reconsideration of this matter, and that the Relief asked, may be granted thereon.

Respectfully submitted,

James A. Jameson,
Attorney for Joseph Rollins,
Defendant-Appellant.

Dated: Detroit, Michigan,
July 27th, 1956.

NOTICE OF HEARING ON SUPPLEMENT TO MOTION FOR A REHEARING

STATE OF MICHIGAN—IN THE SUPREME COURT

The People of the State of Michigan, Plaintiff-Appellee, v. Joseph Rollins, Defendant-Appellant.	No. 46,963½.

To: Mr. William J. Braunlich, Jr.,
Monroe County Prosecutor,
315 Court House,
Monroe, Michigan.

Sir:

Please Take Notice, That the attached is a Supplement to the Motion for a Rehearing, and the same will be brought on for Hearing, along with the Motion for a Rehearing, on Tuesday, August 7, 1956, at ten o'clock in the morning of that day.

Very truly yours,

James A. Jameson,
Attorney for Joseph Rollins,
Defendant-Appellant,
1216 Beaubien Street,
Detroit 26, Michigan.

Dated:
Detroit, Michigan,
31 July 1956.

SUPPLEMENT TO MOTION FOR A REHEARING

STATE OF MICHIGAN—IN THE SUPREME COURT

The People of the State of Michigan, Plaintiff-Appellee, v. Joseph Rollins, Defendant-Appellant.	No. 46,963½.

Now comes Joseph Rollins, defendant and appellant herein, by James A. Jameson, his attorney, and presents this, his Supplement to the Motion for a Rehearing, and states:

1. That this Court, in Denying the Application for Leave to Appeal and for Bail Pending Disposition of Appeal, overlooked certain substantial facts which stand undisputed and which facts raise the following questions:

A. Whether where, as in the instant case, verdict of the court sitting without a jury rests, in part, on a confession extracted from the accused while he was under the influence of intoxicating liquors, the requirements of the Due Process Clause of the Fourteenth Amendment, in respect of confessions, have been met?

B. Whether where, as here, State law makes 'intent' one of the essential elements of the crime charged, but the State presented no proof, at all, in substantiation of that element, the defendant could, consistent with Due Process of Law as guaranteed by the Fourteenth Amendment, be convicted of any crime?

C. Whether the Order of the Circuit Judge, Denying the Motion for a New Trial, constitutes, in

the face of the Court's *"Findings of Fact," of the "Concise Statement of the Proceedings and Facts" to the Application for Leave to Appeal, and of the People's "Additional Concise Statement of Proceedings and Facts"*, plus the undisputed *"Statement of Facts"*, set forth in applicant's *"Brief"*, filed in the Supreme Court, an arbitrary or unreasonable abuse of discretion.

2. That applicant, in view of the fact that he was at license in Cash Bond of $5,000.00, as fixed originally by the Municipal Court of the City of Monroe, is entitled now to re-instatement by the Supreme Court, of such Bond Pending an Exhaustion of his State Remedies.

James A. Jameson,
Attorney for Joseph Rollins,
Defendant-Appellant,
1216 Beaubien Street,
Detroit 26, Michigan.

Dated:
Detroit, Michigan,
31 July 1956.

AFFIDAVIT IN SUPPORT OF SUPPLEMENT TO THE MOTION FOR A REHEARING

State of Michigan,
County of Wayne—ss.

Deponent, James A. Jameson, being duly sworn on oath, deposes and says that he has read the foregoing Supplement to the Motion for a Rehearing by him subscribed as attorney for and in behalf of, Joseph Rollins, defendant-appellant, and that the contents thereof, insofar as the same are based on the files and record of the proceedings and trial had in the Lower Court, he verily believes them to be good and meritorious.

Deponent further says that the Circuit Court Judge in reaching his verdict against appellant, observed (T., p. 100):

> "There is evidence that at the time this entry was effected 'defendant was intoxicated.' * * *";

that the Prosecuting Attorney, in his "Additional Concise Statement of the Proceedings and Facts," filed in the Supreme Court, attempts to show that appellant, at the time of entry of the building in question, was not intoxicated, stating (T., p. 72):

> "Q. You are claiming you were so drunk you don't know what you were doing?
> A. I am not claiming that, sir. I was feeling my oats. * * *";

that deponent verily believes, and does aver, that there is a fatal variance between the express "Finding" of the Circuit Court Judge, as quoted above, and his "Findings of Facts" on Motion for a New Trial; that there is no evidence to the contrary, and that the excerpt quoted from the transcript, by the Prosecuting Attorney, constitutes nothing against the weight of evidence in respect of the defense interposed.

Deponent further says that both the "Concise Statement of the Proceedings and Facts" and the "Statement of Facts" filed herein, stand uncontradicted; and that these "Facts" show, appellant's Federal and States Constitutional Rights of Substance, have been violated.

Further deponent says not.

James A. Jameson,
Deponent.

Subscribed and sworn to before me this 31st day of July, 1956.

George D. Raptieu,
Notary Public, Wayne County, Michigan.
My commission expires January 9, 1959.

BRIEF IN OPPOSITION TO THE APPELLANT'S APPLICATION FOR LEAVE TO APPEAL AND FOR BAIL PENDING APPLICATION FOR LEAVE TO APPEAL, AND IN OPPOSITION TO APPELLANT'S MOTION FOR A REHEARING OF THE SAME ISSUES HERETOFORE DECIDED AGAINST THE APPELLANT BY THE SUPREME COURT ON JULY 25, 1956

STATE OF MICHIGAN—IN THE SUPREME COURT

The People of the State of Michigan, Plaintiff-Appellee, v. Joseph Rollins, Defendant-Appellant.	No. 46,963½.

I.

STATEMENT OF FACTS

The defendant, on April 24, 1956 was convicted by the Honorable Clayton C. Golden, Circuit Judge of the 38th Circuit after a waiver of jury by the defendant, of Breaking and Entering in the Night Time to commit a larceny therein, and was thereafter sentenced to the State's Prison of Southern Michigan at Jackson, Michigan, to serve not less than two nor more than fifteen years.

The evidence presented was conclusive that the defendant did break a window and enter through a window in the night time in the Riviera Restaurant and Cocktail Lounge, and no issue was raised as to those elements of the offense at the trial nor in the subsequent application for leave to appeal. The defendant interposed intoxication as a defense, claiming inability to form the requisite intent to

steal as an element of the offense. However, proof established the physical acts of the defendant immediately prior to the entry, his actions during the entry of the building, and his subsequent statement to the arresting officer as to his purpose and intention. A signed written statement to the arresting officer was admitted in evidence without objection and later the defendant admitted, under cross-examination, the truth of the statements therein contained and throughout the trial did not deny any material fact contained in the statement. The defendant, while a witness on his own behalf, did not claim mental inability to form an intention due to intoxication but on the contrary insisted that his intention in going to the Riviera Bar was to buy whiskey.

II.

In opposition to the reasons set forth for appeal the appellees state as follows:

The appellant's assertion in paragraph 2 (a) that the Court seriously abused his legal discretion in finding the defendant guilty, specifically of the intent to commit a larceny without any rebutting evidence of the special defense of drunkenness set forth, is without foundation in the record. The record is replete with the actions and statements of the defendant shortly before, during and after the entry, and from such facts and circumstances the intention was properly determined by the Court.

III.

The appellant states as the grounds for a new trial that the People did not set forth any showing that a gross miscarriage of justice did not take place in the conviction thus inferring the People's consent to a new trial, is without foundation or merit.

The People submit that the record sustains a conviction for the crime as charged and that these proceedings undertaken for appeal are without any merit.

IV.

The People oppose the conclusion stated in paragraph 2 (c) as a conclusion without substantiation in the record and positively state that the law governing intent in the State of Michigan was followed in the Court's factual determination of the issues presented.

V.

The appellees further are opposed to the following statements in appellant's brief:

> (a) "He was denied a fair and impartial trial by reason of the Court's partisan conduct as displayed in the course of the hearing which resulted in his conviction."

The conclusion is not supported by any citation to the record or any actual aversion contained in the concise statement of facts and is a conclusion without foundation.

> (b) "He was subjected to admission in evidence and to its consideration by the Court as evidence of a so-called confession written out by one of the arresting officers in the case."

This reason for a new trial assumes that a written instrument signed by the defendant is objectionable if prepared by the arresting officer and such a conclusion is not supported by any citation of authority.

> (c) "The Court failed to question the voluntary or involuntary character of the defendant's signing of the alleged confession sua sponte."

No objection was made to the admission of this instrument and subsequently the defendant, upon the trial, admitted the voluntary character and truthfulness of the statements contained therein and no citation of law is given to support the conclusion stated.

VI.

The appellees are further opposed to the conclusions set forth in the affidavit of merits of the appellant particularly the assertions that the record does not, in the least, substantiate the Judge's verdict and the statement that the transcript is entirely barren of any testimony that supports the Circuit Judge's verdict and also the statement that the inexperience of the defendant's counsel constitutes no good reason for denying substantial justice to the defendant.

The People submit that these are groundless conclusions without citation to the record or law for any support.

The appellees submit that the motion for a re-hearing and application for leave to appeal and bail, should be denied forthwith as the record sets forth no matters for meritorious consideration.

(Sgd.) William J. Braunlich, Jr.,
Prosecuting Attorney,
Monroe County, Michigan.

Dated: August 30, 1956.

ORDER OF SUPREME COURT DENYING APPLICATION FOR LEAVE TO APPEAL

STATE OF MICHIGAN—IN THE SUPREME COURT

The People of the State of Michigan, Plaintiff, v. Joseph Rollins, Defendant.	No. 46,963½.

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the twenty-fourth day of July in the year of our Lord one thousand nine hundred and fifty-six.

Present the Honorable John R. Dethmers, Chief Justice, Edward M. Sharpe, Talbot Smith, George Edwards, Emerson R. Boyles, Harry F. Kelly, Leland W. Carr, Eugene F. Black, Associate Justices.

In this cause an application is filed by defendant for leave to appeal from the judgment and sentence of the Circuit Court for the County of Monroe, and for bail pending appeal, and nothing in opposition thereto having been filed, and due consideration thereof having been had by the Court, it is ordered that the application and the motion for bail be and the same are hereby denied.

State of Michigan—ss.

I, Hugh H. Carpenter, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 25th day of July in the year of our Lord one thousand nine hundred and fifty-six.

Hugh H. Carpenter, Clerk.
By: DL Winters, Deputy Clerk.

ORDER OF SUPREME COURT DENYING RECONSIDERATION OF ORDER DENYING APPLICATION FOR LEAVE TO APPEAL

STATE OF MICHIGAN—IN THE SUPREME COURT

The People of the State of Michigan, Plaintiff, v. Joseph Rollins, Defendant.	No. 46,963½.

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the first day of October in the year of our Lord one thousand nine hundred and fifty-six.

Present the Honorable John R. Dethmers, Chief Justice, Edward M. Sharpe, Talbot Smith, George Edwards, Emerson R. Boyles, Harry F. Kelly, Leland W. Carr, Eugene F. Black, Associate Justices.

In this cause a motion is filed by defendant for a reconsideration of the order heretofore entered herein on July 24, 1956, denying defendant's application for leave to appeal from the judgment of the Circuit Court for the County of Monroe, and a brief in opposition hereto having been filed, and due consideration thereof having been had by the Court, it is ordered that the order heretofore entered herein as aforesaid stand affirmed.

State of Michigan—ss.

I, Hugh H. Carpenter, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 2d day of October in the year of our Lord one thousand nine hundred and fifty-six.

Hugh H. Carpenter,
Clerk.

(Seal)

CERTIFICATE OF CLERK OF THE MICHIGAN SUPREME COURT

State of Michigan,
In the Supreme Court—ss.

I, Hugh H. Carpenter, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the annexed and foregoing are true and correct copies of the motion for new trial; findings of the trial court on motion for new trial; order of the trial court denying motion for a new trial; application for leave to appeal and affidavit of merits in support thereof; concise statement of the proceedings and facts to the application for leave to appeal; additional concise statement of proceedings and facts by the Prosecuting Attorney of Monroe County, Michigan; certificate of the court; brief in support of application for leave to appeal; notice of hearing; motion for a rehearing of order denying leave to appeal and for bail; affidavit in support of motion for a rehearing; brief in support of motion for a rehearing; notice of hearing; supplement to motion for a rehearing and supporting affidavit; the State's brief in opposition to the appellant's application

for leave to appeal and for bail pending application for a rehearing of the same issues heretofore decided against the appellant by the Supreme Court on July 25, 1956; order of Supreme Court of the State of Michigan denying application for leave to appeal and for bail pending appeal, dated July 24, 1956; and order of Supreme Court of the State of Michigan denying motion for rehearing; that I have compared the same with the originals and that they are a true transcript thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 24th day of October, in the year of our Lord, one thousand nine hundred and fifty-six.

Hugh H. Carpenter,
Clerk.

(Seal)

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IN THE SUPREME COURT OF THE UNITED STATES

October Term 1956

No. 581

JOSEPH ROLLINS,

Petitioner

vs.

STATE OF MICHIGAN

Respondent.

Petition for Writ of Certiorari To the Supreme Court of the State of Michigan.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I

A

Opinion Below

This Court will note that there appears in the petition for writ of certiorari Order of Supreme Court of Michigan denying Application for Leave to Appeal, and Order denying Reconsideration of Order Denying Leave to Appeal.

All appeals in criminal cases in Michigan are granted or denied by the Supreme Court of Michigan in its discretion. See *People* v. *Stanley*, 344 Mich 530. We include in an

Appendix the Opinion of the Circuit Court for the County of Monroe, Michigan, denying motion for a new trial as Appendix "A", and Order denying motion for a new trial as Appendix "B" which were a part of the application for leave to appeal filed in the Clerk's office of the Supreme Court of Michigan.

B

Jurisdiction

We oppose jurisdiction here for the reason that the Supreme Court of Michigan denied leave to appeal and denied reconsideration of order denying application for leave to appeal and in this setting the petition for certiorari should have sought review of final judgment of the Circuit Court for the County of Monroe, Michigan. See *Michigan-Wisconsin Pipe Line Co v. Calvert*, 347 U. S. 157.

C

Counter-Statement of Questions to be Presented

Did the Supreme Court of Michigan decide a substantial federal question contrary to applicable decisions of this Court by its denial of leave to appeal without stating reasons for such denial, and does the construction of local court rules promulgated by the Supreme Court of Michigan rise to the dignity of deciding a substantial federal question?

D

Statute Involved

Section 750.110 Michigan Compiled Laws 1948, provides:

> "Any person who shall break and enter in the night time with intent to commit any felony, or any larceny therein, any dwelling house, tent, hotel, office, store, shop, warehouse, barn, granary, factory or other building, structure, boat or ship, railroad car or any private apartment in any of such buildings, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 15 years."

E

Issues Raised in State Court

It was not until supplement to motion for a rehearing filed in the Supreme Court of Michigan that counsel for petitioner here sought to raise federal questions as set forth on p. 24 of the petition for certiorari here.

F

Concise Statement of the Case

The only facts essential to decision are these: in a Michigan trial court petitioner was convicted of a criminal offense following trial before a judge without a jury; his counsel did not raise a federal question during the course of such trial, and on motion for a new trial it was held that no objection was raised to the introduction of petitioner's confession; moreover, he stated as a witness that his

confession was voluntary; petitioner then applied to the Michigan Supreme Court for leave to appeal, based upon a concise statement of proceedings and facts certified by the trial judge; in his application for leave to appeal, counsel did not raise the federal question presented here; nor did he raise it in the Supreme Court until he filed a motion for rehearing, which was denied without comment.

II

Argument

The Order of the Supreme Court of Michigan denying leave to appeal cannot be said to be an opinion of that court deciding substantial federal questions contrary to the applicable decisions of this Court.

We think the attempt here to construe an Order of the Supreme Court of Michigan as an opinion upon rendering judgment sought to be reviewed pinpoints the wisdom of the decision of this Court in *Michigan-Wisconsin Pipe Line Co* v. *Calvert, et al.*, 347 U. S. 157, that petition for certiorari here should be sought to review the final judgment of the Circuit Court for the County of Monroe, Michigan, and not to review the Order of the Supreme Court of Michigan denying leave to appeal.

The attempt in the Supplement to the Motion for rehearing, filed in the Supreme Court of Michigan, to raise Federal constitutional questions comes too late for the consideration of this Court.

In this connection suffice it to say that an attempt to raise a federal question before a state Supreme Court upon a

petition for rehearing after judgment, is too late, unless that court actually entertains the question and decides it,

Herndon v. *Georgia*, 295 U. S. 441.

This Court will note from Appendix "A" Opinion of the trial court denying motion for a new trial, that no federal question was raised by counsel for respondent. The trial court went on to say:

> "The so-called confession or admission was offered in evidence and received without objection. There was no question about whether it was voluntarily made. The defendant himself testified that he voluntarily made it; that he agreed to everything in it but he denied the truth of certain things contained in the said so-called admission or confession. The law is clear under the evidence received prior to the reception of this so-called admission or confession. The court was, under the law, justified in receiving it in evidence. The fact that the defendant subsequently denied some matters contained in the written admission or confession were true, is a matter to be passed upon by the trier of the facts, but the matter of the confession was received wholly in accordance with the adjudicated decision of this state and was properly received and that ground is without merit."

And petitioner here having waived trial by jury was brought before the circuit judge for trial, petition for certiorari, p. 13. And ordinarily this Court refuses to reexamine facts found by a state court judge,

Shauer v. *Alterton*, 151 U. S. 607, 626,

Missouri K. & T. Ry. Co v. *Haber*, 169 U. S. 613, 639,

Smiley v. *Kansas*, 196 U. S. 447.

In discussing state statutes and Michigan Court Rules it is hardly necessary to say more than that construction of state statutes and local court rules involve matters of local policy and as this Court said in *Greenough* v. *Tax Assessors*, 331 U. S. 486, 497:

> "State courts construe their statutes according to their understanding of state policy and apply them to such situations as their interpretation of the statutory language requires. In so adjudging they are the final judicial authority upon the meaning of their state law. It is only in circumstances where their judgments collide with rights secured by the federal Constitution that we have power to protect or enforce federal rights."

III

Conclusion

For the reasons above stated the petition for certiorari to the Supreme Court of Michigan should be denied.

Respectfully submitted,

Thomas M. Kavanagh,
Attorney General of the State of Michigan

Edmund E. Shepherd
Solicitor General of the State of Michigan

Daniel J. O'Hara
Assistant Attorney General of the State of Michigan
Counsel for Respondent

The Capitol,
Lansing 2, Michigan.